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CIS

APPLICATION AND ADMINISTRATION OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED

HEARINGS

BEFORE THE

COMMITTEE ON RULES AND ADMINISTRATION UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 1550

TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT TO PROHIBIT THE USE OF COMPULSORY UNION DUES FOR POLITICAL PURPOSES

S. 1766

TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 TO PROVIDE THAT THE LIMITATIONS ON CONTRIBUTIONS TO CANDIDATES SHALL BE WAIVED FOR ELECTIONS IN WHICH ANY CANDIDATE SPENDS MORE THAN $35,000 FROM HIS PERSONAL FUNDS

S. 1851

TO AMEND THE FEDERAL ELECTION CAMPAIGN ACT OF 1971

NOVEMBER 20 AND 24, 1981

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United States Senate

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APPLICATION AND ADMINISTRATION OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED

FRIDAY, NOVEMBER 20, 1981

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The committee met, pursuant to notice, at 9:36 a.m., in room 301, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman) presiding.

Present: Senators Mathias and Ford.

Staff present: Joseph E. diGenova, staff director and chief counsel; John B. Childers, deputy staff director; William M. Cochrane, minority staff director; Gerald W. Siegel, minority chief counsel; John K. Swearingen, director, technical services; Jack L. Sapp, professional staff member; Ann B. Cook, chief clerk; Peggy Parrish, professional staff member, minority; Elaine W. Milliken, counsel, elections; Harriet L. Robnett, deputy counsel, elections; John L. Sousa, minority counsel, elections.

OPENING STATEMENT OF HON. CHARLES McC. MATHIAS, JR., CHAIRMAN OF THE COMMITTEE ON RULES AND ADMINISTRATION

The CHAIRMAN. The Committee on Rules meets today to receive testimony on the application and the administration of the Federal Election Campaign Act, the law that governs our elections.

In addition, we will welcome the comments and suggestions of witnesses on legislation to amend the act, which is pending in the committee.

Now, I have introduced one of the pending bills, Senate bill 1851, which I will say, very frankly, is just a vehicle which will provide us an opportunity to discuss the purpose of the hearings, the improvement of the electoral process.

This bill is not my own invention, by any matter of means. It incorporates legislative recommendations that have been made by the Federal Election Commission. It incorporates recommendations that were made by others during the hearings that we held earlier this year.

Today's hearing will primarily address those provisions of the campaign finance laws which affect congressional campaigns. The committee expects to receive the report of the campaign finance study group of the Institute of Politics of Harvard in January of the coming year, in other words, within about 60 days. That report will contain findings and recommendations on the Presidential campaign finance laws and will serve as the basis for more detailed consideration of these laws by the Rules Committee.

We clearly need to reassess just how all of these laws have achieved the purpose for which they were enacted, and I think we need also to recognize the burdens that the laws have imposed on candidates and on all participants in the political process—volunteers and others. I think we have to examine the unintended consequences of campaign finance laws. And finally, we cannot overlook how the Federal Election Commission's enforcement of the laws has affected campaigning and political participation.

Now, I personally am willing to support whatever changes are needed in order to correct what are perceived as basic shortcomings. But I don't think that we ought to make changes which sacrifice the law's basic objective, which is to preserve the integrity of the electoral process and to preserve the public's confidence in the electoral process.

I believe, and I am willing to state it at the outset, that an independent agency such as the Federal Election Commission is essential to achieve these objectives. I hope that during these hearings, the committee will be able to draw upon a broad range of commentary and opinion. So I hope that witnesses today will be willing to offer their comments or criticisms with regard to current law and regulation so that we can begin to lay a foundation for those constructive changes in the campaign finance law.

First, let me turn to the distinguished ranking member of the committee, the Senator from Kentucky.

OPENING STATEMENT OF HON. WENDELL H. FORD, RANKING MINORITY MEMBER OF THE COMMITTEE ON RULES AND ADMINISTRATION

Senator FORD. I thank my chairman. I have a brief statement, Mr. Chairman, and look forward to the witnesses, as you do.

Although there has been no bill introduced to date to abolish the Federal Election Commission, that is the expressed goal and demand of those Senators who have objected to funding of the Federal Election Commission this year, and at 5 a.m. this morning, we voted on such a funding proposal.

The fundamental issue confronting this committee during these hearings on the Federal election campaign law—is, therefore, whether the election laws shall continue to be administered and enforced by an independent, bipartisan agency.

Those who would abolish the FEC propose to transfer its administrative functions to an election administrator within the Government Accounting Office and to transfer its enforcement functions to the Justice Department. This is not a new nor a constructive proposal. On the contrary, it would undo most of the reforms enacted in response to a very real crisis in public confidence in Federal elections and the Government itself, following the scandals of the election of 1972.

The first, and perhaps the most important recommendation of the Senate Watergate Committee was that Congress enact legislation to establish an independent, nonpartisan commission to administer and enforce the Federal election laws. In making that recommendation, the committee noted that—and I quote—

> Probably the most significant reform that could emerge from the Watergate scandal is the creation of an independent, nonpartisan agency to supervise the enforcement of the laws relating to the conduct of elections. Such a body, given substantial investigatory and enforcement powers, could not only help insure that misconduct would be prevented in the future, but that the investigation of alleged wrongdoing would be vigorous and conducted with the confidence of the public.

Although the present system does have some shortcomings that should properly be the subject of legislative review, the FEC has accomplished what is probably the most important goal of that reform. For the first time in our history, those involved in Federal elections take the campaign finance laws seriously. Can those who would now abolish that agency give us any assurance—any assurance at all—that their proposals will equal this accomplishment?

I will be interested to hear from those who support such changes, not only their reasons for supporting the abolition of the Federal Election Commission, but also their explanations as to why their proposal could reasonably be expected to result in an effective disclosure system.

Although the existence of the FEC is an underlying issue to be considered by this committee at this time, there are also a number of proposals for modification of the Federal Election Campaign Act, including the bill introduced by you, Mr. Chairman. I am proud that you came forward with a vehicle on which we can work and one which we hope will serve as a vehicle for consideration of a number of constructive changes in the law.

I am also interested in hearing any other proposals for improvements to the present law which may be made by any of the witnesses and will be particularly concerned with the effect of such proposals on full, timely, and meaningful disclosure of campaign finances in Federal elections and the extent to which any proposal may intrude into the campaign process.

Thank you, Mr. Chairman, for the opportunity to make this statement. I look forward to participating with you, listening to the witnesses and asking them a few questions.

The CHAIRMAN. Thank you, Senator Ford.

Our first witness this morning is a Member of the House of Representatives, the distinguished Representative from Minnesota, the Honorable Bill Frenzel, who not only is a practicing politician, but also is a student of politics and is, I think, well-qualified to lead off this discussion.

STATEMENT OF HON. BILL FRENZEL, A U.S. REPRESENTATIVE FROM THE STATE OF MINNESOTA

Mr. FRENZEL. Thank you, Mr. Chairman.

May I ask unanimous consent that my prepared statement be put in the record. I would not want to read it through, but rather would like to proceed with a few comments.

The CHAIRMAN. Without objection.

Mr. FRENZEL. To begin those, I would say, Mr. Chairman, that I am delighted that you are holding these hearings, and I am pleased that there have been at least two bills introduced in the Senate, one of which is yours, and I would hope that before we get too far into the New Year that there will be several submissions in the House.

I do believe that the election laws need some changes. We live in a dynamic society, and probably, these laws need review on a regular basis.

However, I believe it is important that should we be able to pass a bill this year, that whatever we do, should apply to elections after 1982, for indeed, we are already into this election cycle. Candidates have raised and expended money already. It seems to me that it is now impossible at this state of our progress through the process that we could change anything for the current election.

In my prepared statement, I have the same affection for disclosure that Senator Ford revealed. I think it is the most important part of the law. I think it is the part of the law that provides whatever popular support there is for the Federal Election Commission. And if we have a problem with disclosure, I think it is that of trying to make disclosure meaningful to the public. You need so much information to get a true picture that the very amount of that information simply overwhelms the public, and as a result, we have the press reporting only those people who gave $1,000 or more, and that is about the kind of dissemination of disclosure material we have. I have no suggestion on how to improve that.

There are, however, some unfortunate things that have resulted from disclosure, and the first of these is that I think we have laid a kind of chilling effect on the process. We have taken the volunteers out of the game. Our volunteer treasurer is now an accountant, and our volunteer chairman is now a paid lawyer, and we have a computer company which keeps the records of our paid accountant, and that outfit must be paid, as well, so we have raised the cost of politics, and we probably have squeezed some important participants out. So I think we ought to look to the law to see that we allow room for volunteers wherever possible.

I suggest in my prepared statement that we file all our disclosure reports with the Election Commission. As you know, now, we file with the Clerk of the House and the Secretary of the Senate, as well. It seems to me that it is an outrageous, unneeded expense, and one that we could well do without.

With respect to trying to get the little person back in the game, I suggest that the candidate reporting threshold be raised from $5,000 to $10,000; that is on page 4. And a little further down, Mr. Chairman, I, at some risk, suggest that section 8 of your bill probably introduces some unneeded complications, and I will not speak further on that.

But I think one of the things that we need to do, if you will look at my prepared statement, is that somehow, we have got to get the parties back in the game. There is the feeling that if some influence in the political system seems stronger than another, an ideological fact, an independent expenditure, a wealthy family, we always look for ways to restrict that influence. It seems to me we are far better advised to let other influences compete. And the most positive influence in the political system, in my judgment, are the political parties, and I believe that we should complete the later stages of the step we took in the last Congress, when we tried to give political parties a bigger piece of the action. I use in here, as an example, my own congressional district, whose Republican Committee is responsible for literally hundreds of races besides my own, but is required to do a good deal of accounting and reporting only because of their interest in my race, but they are, of course, required to report on everything they do. I think we have a long way to go in liberating political parties from reporting and, as you will see later in my statement, from other kinds of restrictions.

So I am suggesting that we remove all reporting obligations from local party committees.

I think in general, it is fair to say the process is overregulated and overreported, and anything we can do to deregulate it and to liberate it without undermining the essential needs of disclosure are important improvements that should be made.

With respect to the Election Commission itself, I have some long history in the creation of the Commission and in dealing with it over the last 7 years or so, since we began our work on this particular agency. I think the agency is somewhat in disrepute and disfavor, certainly among Members of Congress, and I think partly that is because we have given it a very difficult law to work with and partly it is because the Commission itself does not understand its own function. I am not going to repeat the tirade I go through in my testimony here, but it seems to me that the Commission thinks of itself as some judicial panel, rather than as a facilitator or mediator in the election process. The Commission should see that more people participate rather than throwing cold water on folks. That is, it nitpicks unnecessarily, and somehow, it has to be reeducated to know what its real mission is.

There are, as I note in my prepared statement, some other outfits at work and here, Mr. Chairman, I want to congratulate you on hiring the Kennedy Institute to do some work for you. I hope, too, you will look at whatever the American Bar Association Committee on Election Law is doing. I think there will be many other people working in this field.

In general, I would simply say this, that I believe the Election Commission should be maintained. I don't think we should either expand its scope nor repeal the FEC. I think what we need to do is focus the FEC on its job. I romanced briefly with the idea of repeal, but I find that while it has some surface attraction, it would be a very bad thing, I think, in our election process.

I think we should shorten the leash on the FEC and lengthen the leash on the people of the United States so that they could participate more actively in elections, and the FEC would be less interested in harassing them or detailing them to death with paper requirements.

With respect to enforcement, where the FEC has incurred the wrath of the Congress from time to time, I do believe that its enforcement powers are too great, and I think you should, and I hope we will in the House, consider revision of the enforcement powers of the FEC.

With respect to contribution limitations, Mr. Chairman, there is a strong feeling, I think particularly on this side of the Capitol, that individual contributions need to be increased. I do not disagree with that, because contribution limits have not been raised for some period, 7 years, I guess, something like that. Obviously, the cost of living has gone up considerably, and the cost of campaigning has gone up at a rate considerably higher than the cost of living. Those things all ought to be adjusted. But I try to point out in my prepared statement that you cannot simply adjust individual limits and not adjust other contribution limits throughout the act, and I think if we do, we are likely to find ourselves in trouble constitutionally. I think it is instructive every now and then to read the principal court case on this body of the law. Of course, courts change, but I think still, that when we change some person's ability or some entity's ability in the law, we have to be careful that we look at everybody else's and see that they get some similar capabilities given to them.

There are problems with contribution limits. They have increased the length and the cost of the campaigns. They have had some good effects, too. They forced us to go out and broaden the base of our contributors. I think they can be increased, but I hope we do not do it selectively, because if we do, I think that will doom our legislative effort.

Mr. Chairman, in my statement, I have a list of miscellaneous recommendations. I am not going to call the roll of those recommendations orally here. A number of them occur in your bill—section 27, I think, which I think is an excellent suggestion in your bill. There are a number of other ones that I am not going to go through at the moment.

Because you are doing mostly congressional here, staying away from the Presidential public financing side of it, I am not going to go into that. However, I felt it was important to mention at least two items over which your committee may not have jurisdiction, because our comparable committee in the House does not, and that is the equal time and the fairness doctrine requirements.

We are now apparently poised to remove those requirements, and in my judgment, neither the television stations nor perhaps some radio stations, nor the networks, have displayed sufficient maturity or good judgment that they are responsible candidates for liberation from these doctrines.

I do refer in my statement to the fact that the Carter-Mondale campaign tried to buy some time, then the networks decided on their own motion that it was too soon to start a campaign, so they denied them what I think should have been the constitutional right of that committee to advertise and to carry their own campaign the way they wanted to.

More recently, we have had hearings in the House about these predictions of networks about how elections are going to come out, and we find that some of the networks are using, I think rather irresponsibly, the technique of the exit polling, and then basing predictions on those polls. They seem to have no interest in whatever responsibility they ought to have in this matter, and the networks, in fact, that did not use them in the last campaign felt compelled to use them in the New Jersey campaign. I believe all of the major networks at some point in the evening, incorrectly, predicted and led the public to believe that a certain person would be the winner, when we find that none of us know who the winner is.

I do not know if your committee studies that or not, but I would suggest that we would let those doctrines go with great reluctance, and maybe think about replacing them with something else, because I have not seen maturity and fairness represented by the networks and the major stations that would merit their release from those particular doctrines.

Mr. Chairman, again, I want to compliment you on having these hearings. I hope that we will duplicate them in the House at the beginning of next year, and I congratulate you and Senator Spector for having had the ability and the willingness to put forward some proposals from which we can all work.

I thank the committee for this opportunity.

The CHAIRMAN. Thank you, Mr. Frenzel. We are very grateful to you, and you have given us the kind of comprehensive review of the election laws and problems associated with them that I had hoped you would. Let me ask you just a few very brief questions on some specific points.

You indicate that we ought to reevaluate some of the requirements for disclosure. Now, at what point do you think the contribution threshold ought to be placed? Should it be raised from the current $200?

Mr. FRENZEL. Mr. Chairman, I am ambivalent on that. I notice that your bill raises that threshold from $200 to $500, and I would guess that it is not terribly important where we set that threshold, so I think I would have to go back to my initial philosophy, which says report as little as you can, but still get the message of disclosure across. So I think I would be inclined to favor your proposal of moving the threshold up.

The CHAIRMAN. That was just a figure pulled out of the air.

Mr. FRENZEL. It is to me, too. I do not have any good feeling on it. If they left it at $200, I would not feel badly about it; if it went to $500 and eliminated a little reporting, I guess I would feel a tiny bit better.

The CHAIRMAN. Well, now, one of the things that you suggest is that not only is there too much reporting, but there is really too little use of the report, that if some scandal arises in a campaign, the press may look at the report; perhaps Common Cause will look into the report a year later, after the winner has been installed in office, and the loser has another kind of job somewhere.

What do you think can be done to make the reports more meaningful to the general public, more comprehensible and more practical, I suppose is the word I am groping for.

Mr. FRENZEL. Well, I have thought about that a good deal, and I have sort of come to the conclusion that the reports serve their best purpose in looking backward on the campaign. We had hoped when we established disclosure that the disclosure points along the line in the campaign would be meaningful to the public and to the constituency in the particular campaign. We have found because of the crowding of most expenses into the latter end of the campaign that those periodic reports are not terribly helpful, and that the best information we get is after the final reports are filed and everybody knows exactly what the totals were.

So far, the reports along the interim have been mostly helpful to the opponents of the candidates, because they pick out the big givers and solicit them to be the big givers to their campaigns.

I am not sure we can do much better than we have, but I would like to see the Federal Election Commission, which is charged with putting all these things together and making them spell "Mother," come out with a rather simplified report after the campaigns are over, on the basics; how much money was spent, how many big givers, that sort of thing, that you could reduce to a page or a couple of paragraphs that would tell the story of the campaign without showing us all of the transfers from committees and loans repaid, and all the other things that fuzz up the figures and confuse the people who would like to know.

I would say at this point that Common Cause, with whom I don't always agree on the election proposals, has really been the only group who has done a good job in looking at these figures and using them to make proposals and in broadcasting them to the public. I think they have done a far better job than any network or news agency that I know of.

The CHAIRMAN. Just one final question before I turn you over to the tender mercy of the Senator from Kentucky.

Senator FORD. I do not know, really, what that means.

[Laughter.]

The CHAIRMAN. I think one of the most important goals of the election laws at large and all of the structure that we have created through those laws is to give the public confidence in the process, to give the public the feeling that any man or woman who is elected is elected honestly and elected by a majority of those people who have actually voted; a feeling that elections are not bought and cannot be bought, and that cheating in elections is going to be found out and exposed so that when the public views an elected official, perhaps with dismay, with what they have done, at least that dismay will be directed toward what they have done and not what somebody has foisted off upon them in some unfair or corrupt way. So confidence is really, I think, one of the basic goals.

Now, do you think that the system has reached that goal? Do you think the public confidence has been restored, at least to some degree?

Mr. FRENZEL. Well, first, I want to comment on your statement, to say that I agree with it. I think the whole reason that we put the Federal Election Commission together was not to spend money foolishly or not to establish silly regulations. It was so that the people would have confidence in the system.

My best judgment is that the people have more confidence in the system since we have created the Federal Election Commission. What worries me is that the Commission is beginning, not with the general public, but with the people who are on the inside of the election business—all of the lawyers and the candidates and the parties—all of those people, the Commission is in danger of alienating because of what I think are poor enforcement procedures, nitpicking decisions, and inability to reach decisions at some time. So I think it is important that we review the Commission's authority, particularly with respect to enforcement where they have had an awful record. I think it is fairly common knowledge around, that if you are a young lawyer, you ought to sue the FEC because you will undoubtedly win. I have to say that the FEC was successful before the Supreme Court this month, so they do not always win. But I

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think we have to make sure that the FEC is structured so that we will retain the confidence that has been built so far and to enhance it for the future.

The CHAIRMAN. Senator Ford.

Senator FORD. Welcome to the tender mercy.

Congressman, you have recommended, I believe, that local political party committees should be outside the jurisdiction of the Federal Election Commission; is that correct?

Mr. FRENZEL. I do.

Senator FORD. I would presume, then, that you would exempt them from all other restrictions, limitations, and prohibitions of the act?

Mr. FRENZEL. A good question.

Senator FORD. A tender question.

Mr. FRENZEL. It is a tender question. And I think that I probably would, but before treading on that ground, I would want to be a little bit careful. Obviously, we have prohibited contribution, but we have to be a little bit careful.

Senator FORD. Would this exemption from the act create a monstrous loophole that could render disclosure meaningless?

Mr. FRENZEL. Well, it is possible, but if you remember, the candidate still has to make disclosure requirements of his or her own, and could show, of course, in this case, enormous bloc receipts from a party group. But in my judgment, receipts from party groups are good things. Maybe you would want to put a limitation on that party group at some level, but I would hope it would be a relatively high level, compared to the limitations that are now in the law. But you could stop it that way.

Senator FORD. Well, under 441a(d), we are limited as to what kind of help might be given by parties or the political committees of the Congress.

Mr. FRENZEL. That is correct, and I have suggested that those limits ought to be increased just as some of the others have been.

Senator FORD. Under the law now, the State committee can transfer its 2-cent VAP spending authority to the Republican or Democratic senatorial campaign committee; the national committees can transfer their 2-cent spending authority and ultimately those committees can wind up with 4-cent VAP spending authority. An eligible voter usually is one who is registered, but this provision includes those who are not registered so long as they are voting age.

Mr. FRENZEL. Voting age.

Senator FORD. Voting age, yes. That gets to be somewhere in the neighborhood of $9 million; doesn't it?

Mr. FRENZEL. It is a lot of money.

Senator FORD. It is a lot of money. Four cents; that would be $9 million on each side, so you wind up with $18 million, then, that could be generated by the two Senate campaign committees, plus the $17,500 that is now authorized that can be a direct contribution to each Senate candidate.

Mr. FRENZEL. That is correct.

Senator FORD. Aren't we getting to a point where that might be enough for the congressional and senatorial campaigns—or just say the Senate?

Mr. **Frenzel**. Well, I am not a very good witness on senatorial campaigns, Senator, but——

Senator **Ford**. Well, just money for campaigns. You have one for statewide and you have one for district.

Mr. **Frenzel**. In my judgment, most campaigns are underfunded today, and most campaigns of challengers are seriously underfunded. It seems to me a campaign has an obligation to present the character and the positions of the candidates just as vigorously as it can. Unfortunately, it costs a lot of money to do that. It costs television money, and you know all the expenses far better than I do. I have never resisted the spending of money in campaigns, never taken the position that a lot of money being spent on a campaign is a bad thing. I think what is important is how you get that money, whether you disclose it, and that sort of thing. If you spend a lot of money to tell people who you are or what you are, I think that is money well spent. I think the public needs that to make an informed decision.

Senator **Ford**. You mentioned earlier about personal contributions, family contributions, to a campaign. We are finding millionaires of various sizes and the one who has the most money wins the race. In my State for Governor last time, we had two millionaires running, and one spent more millions than the other one spent, and the one who spent the most millions won. Now, are we to get into a posture of allowing candidates to spend several million dollars to win a congressional seat?

Mr. **Frenzel**. That may be possible.

Senator **Ford**. It has happened.

Mr. **Frenzel**. As you know, *Buckley* v. *Valeo* seemed to indicate that individuals could spend their own resources to carry a campaign in whatever amount they felt necessary. It is fair to say, however, that wealthy individuals have not always been the winners. We had one in my State who spent $1.8 million of his own money and failed to win the Senate seat, so it does not always work that way. Sometimes, you reveal too much about yourself when you spend.

Senator **Ford**. Well, these are the questions that I am asked, and these are the proposals that are thrown out to me. If an individual is financially able to put huge amounts of money into a campaign, should there be a trigger—a certain amount of income or a certain amount of expenditure of personal funds by him—that would take the limit off his opponent and let his opponent go after larger contributions, in order to offset those great personal resources?

Mr. **Frenzel**. I think that is an interesting suggestion which I do not think I am prepared to endorse at this point, but I think it is a good idea, and it sounds good to me, and I would like to think about it a little bit. I think it is one way you could balance the scale.

Senator **Ford**. You see, what we are trying to get into—and I think the distinguished chairman and I are both trying to seek the same thing—is just what reforms are needed; how far do you go? I reveal—have revealed—$1 on up. You are not prohibited from doing that.

Mr. **Frenzel**. No, that is the good part about it. If you want to show you are a candidate of the people, you can report everybody who gave you——

Senator **Ford**. Well, I have had reasonably good results with that, but when you reveal from $1 on up, everybody who gives you a contribution, it reveals something, good or bad.

Mr. **Frenzel**. I agree. But getting back to your other point about triggering a release for a larger contribution. In my testimony, I indicated that we should look for ways to balance the scales rather than restrict what seems to be constitutional opportunities, and your suggestion would, I think, fit in exactly to the philosophy I was trying to articulate at that time.

Senator **Ford**. You are doing a very good job and you are a very fine witness. I hope I do not keep you here too long, but because you are very knowledgeable, I want to probe this——

Mr. **Frenzel**. As long as the lights stay on, I enjoy it.

Senator **Ford**. Well, but this is not going back home.

Mr. **Frenzel**. I am afraid not. [Laughter.]

Senator **Ford**. It is not going back to mine, unless the cable wants to turn me on, and they have done that several times, in the wrong direction, I think.

What about the transfer of funds within the party—national party to State, national party to local, State, district—where there would be a State representative or a State senator—you seem to want to just take the lid off that and let as large a contribution go from those State and local party committees as is possible? Am I correct in that presumption?

Mr. **Frenzel**. Well, maybe that is a little bit overstated. I did want to take the limits off of local parties, and I do want to see the limitations that are imposed on parties at all levels extended. But I have never been, or never thought of myself as an extremist, and if we want to raise them a little bit, rather than take the lids off, I guess I would not be disappointed.

Senator **Ford**. Congressman, thank you. I will not keep you any longer. I have enjoyed chatting with you this morning, and I will read your testimony in detail after the hearing. I appreciate your coming very much.

Mr. **Frenzel**. Thank you. Mr. Chairman, again, I am embarrassed that our House is not as far advanced as you are on these kinds of hearings, but I hope that we will follow your good example.

The **Chairman**. Well, if you will read the record for about 5 o'clock this morning, I do not know that you will feel very badly afterward, because it shows the extent of our disarray on the Senate side.

Thank you very much for being here.

Mr. **Frenzel**. Thank you.

Senator **Ford**. You have to give the chairman credit, though; he saved it, 2 to 1.

Mr. **Frenzel**. I have to give you credit for being alive at this time of the morning. [Laughter.]

[The prepared statement of Hon. Bill Frenzel follows:]

PREPARED STATEMENT OF HON. BILL FRENZEL A U.S. REPRESENTATIVE FROM THE STATE OF MINNESOTA

Mr. Chairman, thank you for the opportunity to testify on the Federal Election Campaign Act, as amended, and the other proposals before your committee to modify the act.

Our Federal election laws have undergone many changes in the last decade. In 1971, the Congress passed the first revision since 1925, since then, we have amended the law in 1974, 1976—after the Buckley case, and in 1979. Additionally, Mr. Chairman, the House has considered and rejected congressional taxpayer financing at least three times and has passed one other ill-conceived election proposal in the last session of Congress (Obey-Railsback).

I believe that after this flurry of "reform" activity it is now time for dispassionate examination of law as it is and what we want it to be. I hope that, after a decade of experience with the law, we can recognize our mistakes, and eliminate the flaws. I am grateful to you for starting the election law dialog so that we will be able to draw some conclusions about the impact of the law on our election process.

However, Mr. Chairman, before I share my thoughts on the legislative proposals before you or where the Congress should go in this area, I would first like to say that I do not believe the election law should and can be revised before the 1982 elections. In the past decade, it has been a rare occasion when we have run consecutive elections under the same rules. We are already in the midst of the 1982 election cycle. At least on our side, members have been raising money for their 1982 campaigns for the last six months. It would be unfair and unwise to change the rules in the middle of the process. Additionally, Mr. Chairman, there is little enthusiasm for controversy on the House side, and in my judgment, there is not a great deal of dissatisfaction with the status quo.

Now, that statement should imply neither that the law is perfect nor the Federal election commission flawless, nor that changes are out of the question. However, when one weighs the confusion that will come about with a new law, new regulations, and perhaps a different enforcement authority, no matter how worthy changes might be, if enacted, they should apply to the 1984 election cycle.

I would like to share, generally, some of my observations about the primary components of the law and the proposals you have before the committee.

DISCLOSURE

I think almost everyone can and will agree that disclosure is the single most important feature of the election law. The public—generally that means the media, Common Cause and my opponent—have ready access to my reports either at the Federal Election Commission or at the local secretary of State's office. Candidates, party committees, and political action committees are used to the disclosure concept now, the public expects it and the system, I believe, is the better for it.

However, all of this disclosure has taken its toll on the process. First, we have removed the volunteer from the position as treasurer, and instead put the accountants and lawyers in charge. This has, of course, raised the cost of campaigns because they have to be paid. The computer company which keeps your records must also be paid.

Secondly, I believe we have discouraged some small informal groups from contributing or participating because they might incur reporting requirements that would go on forever. Also, I believe we have confused our local party committees sufficiently so that they too are nervous about participating in Federal races—one of their most important duties in our system.

While the 1979 amendments reduced some of the burden, I beleive it is necessary to reevaluate some of the requirements.

All reports should be filed with the Federal Election Commission instead of the House candidates filing with the clerk of the House and the Senate candidates filing with the secretary of the Senate. Currently, on the House side, the clerk's responsibilities under the act are costing the taxpayers approximately $100,000. Additionally, they have attempted to do their version of the FEC's "Request for additional information" and filing notifications which are time-consuming and confusing for candidate's committees.

I would also recommend raising the candidate reporting threshold from $5,000 to $10,000 and provide for some termination of a principal campaign committee's reporting requirement two years after the election year. This would go far in eliminating some of the commission's expenditures in their non-filer program and eliminate their harassment of committees who were active in 1976, but haven't been seen or heard from since.

Mr. Chairman, I would like to comment briefly on section 8 of your draft bill. This section would require corporations, labor organizations and national banks to report the funds spent on several exempt functions they are allowed under the law. While this reporting might satisfy someone's curiosity, I'm at a loss as to what public need is served by requiring administrative and solicitation costs disclosure. Moreover, I would hate to imagine what kind of mischief the FEC could get into if it were allowed to monitor this reporting.

As I mentioned earlier, one of the most unfortunate ramifications of our election laws is to scare our local party committees out of Federal elections. The 1979 amendments took a small, but welcome, step toward alleviating this problem. Still, we need to go much further.

Currently, State and local party committees incur reporting requirements if they make contributions aggregating in excess of $1,000 during a calendar year or if they make expenditures over $1,000 in a calendar year. They also have to report if they receive over $5,000 in contributions during a calendar year or if they make payments for certain exempt activities like pins, bumper stickers, handbills, brochures, posters, party tabloids and yard signs in excess of $5,000.

Now, all of these conditions can be pretty confusing to a group that is typically a volunteer, loosely organized group of political activists. Although, they may do certain types of things, they are not permitted to run phone banks, put up a billboard, or run a registration and get out the vote campaign for a Federal candidate unless they register and file reports with the commission.

Now while it doesn't appear we're requiring any more of these groups than we do of other participants, let me give you an example of how this impacts on my Minnesota 3rd District Republican Committee. This local party unit is charged with responsibility for 28 State legislative races, 10 State Senate races, 6 county commissioners, 14 mayors and 72 members of the various city councils. Additionally, it runs the 3rd district party activities on behalf of 5 State-wide campaigns and 2 Senate campaigns.

Although, I would like to believe that the committee is there to run party activities for me, my election is only one of 125 State offices and 2 Federal offices that it is concerned with. But, if it decides to run a phone bank on behalf of the Republican ticket and include me, the committee may be required to report all of its other expenditures to a Federal agency.

Its other alternative is, however, to set up separate bank accounts and run a separate bookkeeping system and report only its Federal activity to the commission. This requirement places an unnecessary burden upon them and does in my judgment have a chilling effect on its activities. I believe we should encourage the local committees to present their candidates as a team, to promote them as a team and not require them to jump through a rather large Federal hoop before they do what party committees are supposed to do.

I would suggest to the committee that we remove all reporting obligations and take the local party committees out from under the jurisdiction of the act.

Mr. Chairman, before we add additional reporting requirements or restrictions, we must examine the ones we have and determine if they are reasonable or whether they are basically unnecessary and only add to the over-regulation of the political process. I would urge the committee to look very carefully at any recommendations or new provisions that add further Federal involvement. The process is overregulated now and we should be examining ways to deregulate it rather than adding new layers.

FEDERAL ELECTION COMMISSION

Mr. Chairman, I was one of the primary sponsors of the amendment that created the Federal Election Commission in August of 1974. I believed that we needed a bipartisan, independent enforcement authority for our new election laws.

It should probably not have come as a surprise that such a Federal agency did not operate with business efficiency. Its worst detractors have described it as "hopelessly bureaucratic and incorrigibly nitpicking." All of us will agree it didn't take long for it to become a favorite congressional whipping boy.

While I do not share the strong feelings of my colleagues who would like to abolish the Commission, I am not at all pleased with their performance.

Most everyone who is interested in campaign financing would give the Commission a good grade for their public records and information office. I think it does a good job at assisting people—mostly the press—to utilize the financial information that is available.

I also believe it does a reasonable job in assisting candidates and political committees with their 800 number service. Unfortunately, I must temper that praise with a bit of criticism—last year, two days before the October 15 report was due, it closed on Columbus day so no one was there to answer the phone.

However, the FEC's enforcement policy—if it has one—is a real nightmare for those involved in it. The Commission takes forever to make decisions on complaints. The reports analysis division and the audit division send hundreds of so-called potential violations over to the General Counsel's office to lanquish in someone's bottom drawer. Attorneys who have clients involved in a case are told to have their response within ten days, but after they comply they may not receive a response from the Commission for months.

Mr. Chairman, the Commissioners have never really understood the fact that they are not judges. They have not understood the concept of "voluntary compliance" that we thought we had written into the law. Their enforcement policy is unnecessarily punitive. They require confessions of guilt and a payment of a civil penalty for such heinious crimes as forgetting a disclaimer. Respondents are not afforded an opportunity for a hearing before the Commission.

The Commission is supposed to foster participation, not suppress it. It is supposed to mediate not prosecute. It is not a court. It is a faciliation for our representative election process.

Many of the enforcement problems are because the Commission is reluctant to assume responsibility for the lack of administrative procedures in the Counsel's office. The Commission almost appears unwilling to birddog the staff into processing the paper faster. It has been brought to my attention that there is currently a committee on election law at the American Bar Association evaluating the FEC's enforcement and administrative procedures. This committee will be making a formal recommendation to the administrative law section of the ABA in January. I think both oversight committees should review those recommendations carefully. Perhaps we should also consider having the administrative conference of the United States evaluate the OGC's office before taking the drastic step such as moving the enforcement authority over to the Justice Department.

On balance, Mr. Chairman and members of the committee, I do not think the Commission is so broke that it can't be fixed. The solution lies neither in expanding its scope and authority nor in repeal of the FEC. Rather, it lies in deregulation of elections and liberation of participants in elections. In short we must give the Commission less to monitor and fewer reasons to sue and fine people.

CONTRIBUTION LIMITATIONS

Mr. Chairman, contribution limitations—probably more than any other aspect of the Federal election law—has had a profound impact on the election process. We have seen some interesting positive results and many negative results.

First, the good, the limits have equalized the influence of the so-called fat cats, people are no longer buying ambassadorships and, to a certain extent, we have probably forced some candidates and committees into broadening their financial base of support.

The bad results are more numerous and harder to cure. I believe limitations have devastated both political parties. The national Democratic Party is no longer able to rely on the unlimited financial capability of a few donors. While it has taken Democratic national fundraisers longer to adjust to the phenomenon of limits, I applaud their determination to emulate the success of the Republican committees and wish them well.

The national republican committees have been seriously hurt in another respect. Obviously, they do not have as difficult a time raising money as their democratic counterparts because they have had a long-standing tradition of relying on the small, individual contributor. All three of the national republican committees will probably raise close to a $100 million in this cycle with an average contribution rate of $26. However, their influence has continued to diminish because of the limitations placed upon our party contributions to candidates. In the 25 House races where republicans defeated Democratic incumbents, the party represented about 8 percent of the total receipts. It barely offset the advantage those incumbents had in raising money from nonparty committees.

Contribution limits have chased money elsewhere—into propositions and independent expenditure committees. While everyone enjoys the first amendment right of free speech, some are enjoying it more than others. I would not support efforts to inhibit these groups. Furthermore, I don't believe the court will look favorably on it. I believe the solution to the "perceived" problem of the influence of independent groups is to liberate the party committees and allow them to assume the stronger, more powerful role. Only one group—the political parties—have the ability, the national base, the community of interest and support to neutralize the independent groups. I would strongly urge the committee to consider and accept the recommendation of national republican committee's chairman Richard Richards for changes in the election law to expand the party's influence.

Contribution limits have also managed to increase the length and the costs of campaigns. It takes more time and a lot more money to raise contributions in small amounts.

Mr. Chairman, if we are going to "tinker" with the limits, we cannot do it selectively for some and not the others. All of the limitations were imposed in 1974. All of them should probably be raised, or none of them should.

MISCELLANEOUS RECOMMENDATIONS

Section 27 of the Mathias bill to provide for corporate approval for solicitation of corporate executives by a trade association political action committee to stand until revoked by the corporation is a positive step forward.

However, Mr. Chairman, in my judgment, this provision does not go far enough in alleviating an onerous requirement of the law. As more corporations form company political action committees, it becomes increasingly difficult for a trade association PAC to raise money let alone having to first seek corporate approval. A recent Civic Service, Inc. poll of approximately 275 corporations with PACs indicated that only 11.5 percent permitted trade association solicitations. I would urge the committee to delete this unnecessary restriction.

Mr. Chairman, there are three other instances in the trade association area that deserve a brief mention.

First, we need to clarify the law so as to permit corporations without capital stock and cooperatives to solicit their corporate member's executive and administrative personnel. It was not the intent of Congress to deny them that opportunity, but the act's silence and a Commission advisory opinion permit ambiguity. These organizations should be treated as trade associations are under the law.

Second, Mr. Chairman, we need to clarify the law to distinguish between public municipal corporations, such as electric utilities or transit districts, and private for-profit corporations. Under an old Commission advisory opinion, trade associations comprised of municipal corporations are saddled with the same prior approval requirement as are private trade associations. This does not reflect congressional intent and serves no public purpose.

Third, we need to clarify for the FEC what a solicitation is so as to permit trade associations to disseminate information at their annual meetings.

Section 27, the provision to provide for solicitation of families of members of membership organizations, cooperatives, or corporations without capital stock or their separate segregated funds will correct an obvious disparity in the law.

Additionally, under the law, non-connected organizations are not included in the section 4419(b)2 exemptions. One of the exemptions permits corporations and labor organizations to use treasury funds for administrative and solicitation activities. I believe entities without a connected or parent organization should be extended a similar advantage and be permitted to raise donations for administrative purposes. These donations, of course, would be required to be kept in a separate account.

We also need to provide our party committees standing to request expedited procedures for their requests for advisory opinions.

The present chairman of the Federal Communications Commission has publicly advocated the repeal of the "equal time" and fairness doctrine requirements. The view has become popular in the broadcast industry that marketplace forces alone are sufficient to protect the general public's first amendment right to receive diversified types of programming and information. However, diversity will not be preserved by repealing the vehicles that promote diversity.

In my opinion, the marketplace in broadcasting, especially television, consists of an undue concentration of resources in a handful of corporations who provide little substantive diversity in programming or information. In an age when the vast majority of information is transmitted and received electronically, we must insure that no group is in a position to impede or control the flow of information. In the last election certain networks denied access to President Carter's campaign when he announced his candidacy, even though the current law guarantees such access. This arrogant behavior of the broadcasters states more forcefully than I can the need for preserving the current rules that insure access, fairness and equal time.

Mr. Chairman, it is almost impossible to testify on the election law and not mention taxpayer financing. I believe the chairman knows I consider taxpayer financing a pernicious influence on our participatory democracy. Nevertheless, I commend the Senate Rules Committee for commissioning the study of the impact of the public financing law by the Institute of Politics at Harvard. I believe its recommendations and findings will be an important base upon which to consider some much needed and desired revisions.

I want to thank you again for the opportunity to testify before your committee. I would like to reiterate my belief that we should not make any changes in the election law effective for the 1982 election cycle. We have complicated the process so much now that any new complications would just further compound the already difficult set of rules and regulations. Thank you.

The CHAIRMAN. Our next witnesses are a strictly bipartisan panel, on which we will invite the distinguished chairman of the Republican National Committee, Mr. Richard Richards; and the general counsel of the Democratic National Committee, Mr. Anthony S. Harrington, to come to the table.

Gentlemen, we have a bipartisan committee ready to give you a bipartisan welcome.

Senator Ford, do you want to make it a bipartisan welcome?

Senator FORD. Welcome.

The CHAIRMAN. Mr. Richards, why don't you start?

STATEMENT OF A PANEL INCLUDING RICHARD RICHARDS, CHAIRMAN, REPUBLICAN NATIONAL COMMITTEE; AND ANTHONY S. HARRINGTON, GENERAL COUNSEL, DEMOCRATIC NATIONAL COMMITTEE

Mr. RICHARDS. Thank you, Mr. Chairman. I have a prepared statement, consisting of nearly 6 pages. I will not read it——.

The CHAIRMAN. However, let me say to both of you that without objection, your statements shall be included as if read.

Mr. RICHARDS. Thank you, sir.

I would like to say that I appreciate the opportunity of meeting with your committee and giving our point of view on a couple of these matters. I know that the members of this committee share the concern of the political parties and the integrity of our political processes, and I think what you are now doing is extremely important to maintain that integrity and, of course, my desire is to increase the role and the responsibility of the political parties as we become involved in the political processes.

A couple of points that I would like to make clear without having to read the statement are, No. 1, I am not recommending an abolition of the FEC. I believe we need it for reporting purposes. I think it is important to the political processes that the American voter can go someplace and find out who has contributed to the political campaigns and the amount of that contribution.

The other point that I want to make is that I hope that when changes do indeed occur—and hopefully, they will—that they occur with enough leadtime so that the candidates and the political parties know precisely where they are going. Any change prior to the 1982 campaign, of course, would cause more chaos than there already is.

I want to discuss additional areas, however, some of which are consistent with what the Congressman has just stated. We are suggesting in our statement the elimination of the spending limits on behalf of candidates by political parties, or a substantial increase in the party expenditure limits. I think that is a significant thing. Let the parties spend what they want on behalf of their own candidates. My second point was, include all parties in the "pins, bumper sticker, and get-out-the-vote" exception to the definition of contributions to Federal elections, merely because I think they are not significant in the campaign, and because of the resulting undue hardship on the reporting process.

My third point is, increase party contribution limits to House candidates and to Senatorial candidates; exempt the legal, accounting, and administration expenses from the definition of contributions or expenditures for party committees. We have reached the point where now, it seems as if one out of five members of a campaign staff must either be a lawyer or an accountant in order to keep things straight.

My main point in my statement is, I believe the objective of Congress in amending the Federal Election Campaign Act should be to place greater responsibility on political parties and hold them accountable to the American people for the quality and performance of their candidates, discussion of the issues, and all fundraising and campaign spending activities. I think it will be good for the country. Campaigns will be conducted on a higher plane. They will be more truthful, more straightforward, and more pertinent to the issues that are important to the voters at that particular time. I think provisions in the code that tend to relieve political parties or candidates of responsibility do a disservice to everyone, and it does not make sense to me that Congress would limit campaign expenditures for political parties, who have a major responsibility in the campaign process and at the same time have no limitations on independent expenditure groups who can spend what they want, say what they want, and they are not responsible to anybody. As the chairman of the national committee, I have had some difficulty with independent expenditure groups, and I have come to the conclusion that the only way to keep that problem in hand is to take the limits off what a party can do; therefore, there really would not be a need for the independent expenditure groups. I know the conservative groups have been criticized in the last year or so because of their involvement in the campaigns, but I do not think the risk is limited, by any sense of the word, to the conservative independent expenditure committees. According to the paper the other day, there was a large fundraising activity in this town, and the proceeds of that dinner went to the committee called Democrats for the Eighties. I think we are going to see the liberal independent expenditure groups raising a lot of money and the conservatives raising a lot of money, and they will spend it fighting each other, not talking about pertinent issues, not talking about the candidates, not really zeroing in on the kind of things that the voters want to hear. I think it would be bad for politics in this country. And I think that through maintaining the responsibility for the political parties and for the candidates, we are going to get past that problem.

Based on what the Supreme Court has said, I think the only way you can eliminate these groups that have no responsibility in a campaign to a candidate or to a party is let the parties spend what they want, and then these committees will have a harder time raising money, and of course, there is no justification for their getting involved in the campaign.

One more point, and then I will stop. We are not asking this committee to raise the lid on individual contributions. I know it may sound a little boastful, and I presume it is, to say that the Republican Party does not desire to remove the limit off campaign contributions, because we depend on small donors. Seventy percent of the money we receive in the Republican Party today, Mr. Chairman, comes from people who give us contributions of $25 or less, and at the present time, we have 1,450,000 givers of those small contributions, and we depend on them, and we are delighted that that is our case, and we are really not asking to take the limit off the big givers.

Senator, thank you.

The **Chairman**. Thank you very much, Mr. Richards.

Mr. Harrington.

Mr. **Harrington**. Thank you, Mr. Chairman.

I am sufficiently fond of my prepared statement that I would like to read a few portions of it and present it to you this morning.

The **Chairman**. Those are the purple passages?

Mr. **Harrington**. Yes, sir.

On behalf of the Democratic National Committee, I am pleased to have the opportunity to share with the committee a few observations which we believe are pertinent to these oversight hearings concerning the administration of the Federal Election Campaign Act and possible changes in the law.

As we have noted, the appropriate focus of these hearings would appear to be the need for refinement of the law and its administration, with the benefit of experience, in the spirit of some of the amendments introduced by the chairman. However, we believe that these hearings have taken on exceptional importance, occurring as they do at a time when some are urging or making efforts not to refine the law, but to scuttle it, and when some have proposed to accomplish this highly questionable objective through the backdoor approach of curtailing or terminating funding for the Federal Election Commission and thereby rendering the law itself a mockery.

Most of us who have had to operate under the campaign finance laws—perhaps I could almost say "all of us"—have experienced some frustration with the burdens of complying with the law, and the FEC's sometimes seemingly rote efforts to enforce the law. Likewise, most of us have surely listened to some complaints and tales of woe on the part of others. There have been some amusing and perhaps ridiculous examples, such as the demand for a standard disclaimer for a sign painted on a water tower, or the rigorous enforcement efforts directed at an elderly candidate residing in an old soldiers home who had failed to report for the very sound reason of having no finances to report. I could not honestly give either the law or the Commission a perfect score, and I have had a few moments when, if I had had the power to do so, I might have been tempted to strike the law from the books by myself.

With the benefit of some reflection, however, we must conclude that the law and the creation of the Commission were and remain good ideas. With the continuing benefit of experience, a few adjustments in the law are doubtless appropriate, but major surgery on the law or crippling of the Commission are just as certainly not in order.

To facilitate a reasoned judgment on such questions, one must, of course, recall the basic purposes of the act from the beginning. As demonstrated by the legislative history and our own fairly recent recollections, I would characterize the purposes for which the law was enacted as follows.

First, public disclosure of the sources and uses of political funding so that any attendant "strings" or "dirty tricks" would more likely receive public scrutiny and bear appropriate fruits in the electoral process; second would be restrictions on the amount and sources of political funds, so that public offices are less likely to become commodities for sale to the highest bidders or the deepest pockets; the third area is public financing to relieve some of the burdens, at least, of seeking the highest offices of our country; and then, finally, independent and effective enforcement of the law so that the requirements, some of which have been on the books in different form previously, would not continue to be a hollow shell.

While a handful of people would apparently disagree, we firmly believe that most of us, and the overwhelming majority of the public, find such purposes to be as legitimate today as they were when the laws were enacted. The laws were enacted partially in response to the abuses of the Watergate period, which the DNC, as the object of some of those abuses, cannot and should not forget. We do not believe the American people would find tolerable any effort to disregard these purposes now and to reopen the doors to the electoral evils which led to the enactment of the law and the creation of the Commission.

As President Ford stated in his message to the Congress on the 1976 campaign finance legislation:

> The American people can and should expect that our elections . . . will be free of abuse. And they know that the Federal Election Commission is the single most effective unit for meeting that challenge.
>
> If it becomes an empty shell * * * public confidence in our political process will be further eroded and the door will be opened to possible abuses in the coming elections.

I would like to focus particularly on the fourth purpose that I mentioned—that of independent and effective enforcement of the law—because some of the discussion of the Commission's performance as the vehicle of enforcement has led to some rather Draconian suggestions. Aside from the outright abolition or elimination of funding, such suggestions have included returning the administration to other areas such as the offices of the Secretary of the Senate and the Clerk of the House and/or the Department of Justice. We would strongly resist such actions for the very good reasons which led Congress to create the agency in the first place.

First, as Congressman Broyhill, from my home State of North Carolina so well stated in 1974, in debate on the legislation:

> I firmly believe that an independent commission will eliminate the possibility of conflict of interest, reverse the long history of nonenforcement, and increase coordination between the administrators and the enforcers of the law. But more importantly, creation of an independent body would help foster public confidence in the effectiveness and fairness of the election laws and in public officials themselves.

Second, the undesirability of returning enforcement to the Justice Department is demonstrated by both its prior record of enforcement activity and the undeniable threat or perception of political responsiveness on the part of the Department to whichever party the administration is drawn from at the time. According to the 1975 report of the GAO's Office of Federal Elections, which then had the administration of the law before it, the Clerk of the House and the Secretary of the Senate referred approximately 7,000 cases to the Department of Justice in connection with the 1972 elections. Not a single one of those cases was ever litigated. Over a 3-year period, the Comptroller General referred more than 100 cases in which they considered serious violations to have occurred, and the Justice Department prosecuted so few that the Comptroller General was prompted to respond that, the action of the Justice Department "* * * has generally been too belated and too limited to be of significnat value in administering the law."

Thus, while there is assuredly room for improvement in the FEC's performance, we believe that most of the problems stem from the inevitable, evolutionary period through which the agency has come, and more importantly, from some of the structure and terms of the law itself. The FEC's record as an independent, bipartisan agency provides a quite favorable contrast to the record of the Justice Department. For example, according to its 1980 annual report, the Commission was in that year involved in approximately 65 lawsuits. Belying some of the impressions that Congressman Frenzel related and some that I would have held myself, frankly, if I had not seen the record, of those 65 lawsuits, 33 were resolved during that year, and the Commission's position was upheld by the court in all but two instances. It has acted with an exemplary combination of timeliness and careful controls in administering millions of dollars of public financing, and it should continue its excellent efforts to provide useful information and effective assistance to candidates and campaigns and to encourage voluntary compliance.

I might say as an aside that I would also pay a certain amount of tribute to the thousands of candidates and political committees who have operated under the law, for with few exceptions—some of them notable—there have been relatively few problems. To some extent, I think we are worrying about a problem that is not quite as great as the shape of it might indicate sometimes.

If one can find a common thread in the course of complaints regarding the actions of the Commission, it is surely its lack of a reasonable measure of discretion or perspective in its interpretation and enforcement of the rules of the game. However, I would like to suggest that this problem stems more from some of the rules of the game than from the umpire.

The Commission has fairly protested in some instances that in many respects, the minute detail and mandatory character of the law have left it relatively little discretion. A quick reading of the FEC regulations in some instances and their virtual verbatim resemblance to the act demonstrates support for the conclusion that not much discretion has been left.

Perhaps we could make a useful comparison to the Federal securities laws and the Securities and Exchange Commission. In the 1930's, the new law and the new agency represented a major intervention into the securities market to avoid some of the disastrous abuses which the country had recently suffered. With few exceptions, these laws have long been almost unanimously recognized as crucial to the protection of individual investors and to our financial structure. In contrast to the complexity of the Federal Election Campaign Act, the Securities Act of 1933 has, when you boil it down to its essentials, two basic requirements: First, the requirement of registration and substantial disclosure prior to offering stock to the public and, second, the prohibition of dissemination of material, misleading information concerning securities. The SEC was left major discretion to develop, and it has used that major discretion, to develop and enforce a comprehensive scheme of regulation.

We do not suggest that the campaign finance law area can be treated in precisely the same way, but we do believe that a much greater measure of flexibility and discretion is merited, both in the law and in the FEC's own application of the law in its enforcement activities.

The chairman's bill proposes some of the kinds of changes which we think are in order. One example would be to allow the Commission, either by regulation or on a case-by-case method, to grant waivers of certain reporting requirements when they consider that they are not necessary to the accomplishment of the purposes of the law. I think you will probably find this kind of discretion reposed in most agencies.

Another possibility would be the establishment—again, reflected in the chairman's proposed amendments—of an administrative mechanism which would afford appropriate periods of opportunity to correct minor deficiencies in compliance prior to the burdens, for candidates and committees, and for that matter, for the Commission itself, of some sustained enforcement activity.

Some other changes which we would mention as meriting careful consideration in the deliberations that will ensue before this committee and before the House include the following:

First, use of the concepts of substantiality or materiality of alleged violations as appropriate conditions for the commitment of the FEC's resources to its investigatory or enforcement activities; second, elimination of the individual State spending limits for Presidential primary campaigns; third, an increased level of public funding for the Presidential general election, in light of the large surplus that exists in the fund and the increased costs that have been experienced, particularly in the area of media; fourth, application of the law's requirements to draft committees on essentially the same basis as other political committees; fifth, a separate tax credit for contributions to the national political parties; and I would add a sixth, which is not in the statement, having noticed it in the chairman's bill subsequent to the preparation of the statement; I would add the requirement that any political committee which is using a variation of the name of a national party use in its communications a disclaimer indicating that its communications are not authorized by the political party whose name it carries in some resemblance.

In conclusion, Mr. Chairman, the Democratic National Committee urges that this committee reject any ill-considered and dubiously motivated action to thwart the sound purposes of the act. As Senator Hugh Scott stated in testimony before this committee in 1976:

> The frequent sounds of pain emanating from some corners of Congress over the Commission are a sign that the medicine prescribed in the 1974 reforms is working well, a sign that the abuses infecting and corrupting our election system are actually being cured, and a sign that the Federal Election Commission is the right doctor for the job.

I notice I am quoting in large part from Republicans today, and I had not realized how eloquent some of the statements were in this area.

The CHAIRMAN. I wish I had remembered that last one earlier this morning.

Mr. HARRINGTON. Instead of thwarting the purposes, we would urge the kind of careful, methodical review which our common experience suggests and in the same spirit of the task force which this committee has set in motion to continue this review.

We thank you for the opportunity to present our views.

The CHAIRMAN. We thank you both for being here.

I am sure that I speak for every member of this committee in saying that it is our collective view that political parties themselves ought to play a very active role in the development of the philosophy and the practical principles under which the political process is carried out. So I think your appearance here today and the views you have presented, and your participation, is of particular importance.

And perhaps, if the Senator from Kentucky has no objection, we might underscore that importance by asking you to comment just for a minute on what each has said. For example, Mr. Harrington, how do you feel about the points that are raised by Chairman Richards, that there should be a revision of the law to permit political parties to provide greater financial assistance to candidates?

Mr. HARRINGTON. Well, Mr. Chairman, as Chairman Richards has initiated in the RNC, we intend to complete a more comprehensive review, consulting with our associates in the House and Senate on the area, and many of these areas are going to require further scrutiny and consideration by this committee and by ourselves, before definitive positions emerge, I am sure.

As far as the elimination of limits for political party contributions, it seems to me that it might well fly in the face of the purposes of the law. The purposes of the law as I outlined them with respect to public disclosure and limitation of the impact of financing to a reasonable level do not necessarily—the laws are not necessarily intended to build political parties, but certainly are intended not to restrict them.

I would say that we would have to consider it much further. I have noticed in recent months, from some of the information that is available through the Federal Election Commission, that there has been a tremendous discrepancy in the accounts of the political parties, so we would have to consider whether the result is in the interest of the public or indeed, would permit an achievement of the kind of purpose which the law sought to avoid, in a disproportionate impact of finances on the results of elections.

The CHAIRMAN. You think it is not the principle of the thing, it is the money.

Mr. HARRINGTON. You can spell principle two ways. [Laughter.]

The CHAIRMAN. What about Chairman Richards' suggestion that legal and accounting and administrative expenses should be exempted from the computation of contributions or expenditures?

Mr. HARRINGTON. I would say that I am pretty much 100 percent sympathetic with his views there, having seen it from the side of the lawyer, as well as the side of the political committees and candidates. It does seem to me that we have imposed—with good reason, perhaps, but we have imposed—a substantial burden on candidates and campaigns. There are presently some exemptions in the law from the definition of contribution, the limits and the reporting requirements, but there remains some regulation. And I would say that it is certainly worth further consideration to remove the differences which I believe exist between the national political party exemption and other political committee exemptions, whereby the exemption applies for the national party across the board with respect to legal services and for other political committees only for services relating to campaign finance laws. I also do not believe it is an area that requires reporting; even if we are exempting them from the contribution limits, I do not believe that it requires reporting as well. So I would agree.

The CHAIRMAN. In the interest of equal time, Chairman Richards, do you want to comment?

Mr. RICHARDS. Senator, as you look at these problems, the role of the political parties and the position they take will vary from year to year, and that is why, obviously, you have some difficulty in passing the right kind of legislation. For example, when your party is the challenger party, you would like to see a greater contribution from the Public Treasury for the Presidential candidates, because it is hard for a challenger to take on an incumbent for $29 million, and yet the incumbent's desire is to hold the contribution to that Presidential campaign down. When the political party lives off little givers, they are glad to see the lid on the big givers, and that is the position that we are in today; the Democrats are in the reverse position today, but that has not always been the case. So what we find now, as just indicated, is the Republican Party has money in its coffers, and it is to our best advantage, obviously, to take the lid off of what a party can do. At the same time, the Democrats would like to limit what a party can do because they are not in that preferential position today, but they want to take the lid off contributions so that they can get more from their big givers. This poses a problem on you and your committee. As you look at these things, you have to recognize that the role of the parties or the position of the parties is going to be different from year to year, and you just have to decide what is right and what is good for the political system. And there is no way that I can see any good in the political system by limiting what a political party can do on behalf of its own candidates while allowing people who are not a political party, who are not responsible to the candidate or anyone else, to interject themselves in a campaign and spend all they want, saying what they want, for whom they want or against whom they want. That is ludicrous and I think that situation arose from the limit on the party spending. I think it is the greatest evil that we see in national politics today.

The CHAIRMAN. Well, now, Chairman Richards, the thrust of what you have said, as I perceive it, is that we need to strengthen the party system, and that we could use the provisions of the campaign finance laws to promote that goal. And of course, you can go too far down that road. And the day might come, if you do go too far down that road, when instead of having Chairman Richards sitting there, it could be "boss" Richards, or even "czar" Richards——

Senator FORD. Or "emperor."

The CHAIRMAN. Where do you draw the line? How far do you think you can go before you give the parties kind of a stranglehold on the system, whereby the only route to public service and the only route to influencing the political structure is through the very narrow funnel of the party leadership?

Mr. RICHARDS. Well, I heard the comments of Senator Ford about the disparity of some candidates in having money and others not having money——

Senator FORD. I was talking about personal ability to finance their own campaigns in millions of dollars.

Mr. RICHARDS. I understand that, sir. But when you have a rich candidate running against a poor candidate, the only equalizer is a party behind the poor candidate. I do not know of any other equalizer. And the interesting thing about these political campaigns and campaign spending, is that the political parties really put quite a little bit of restraint on themselves as they spend money. They do not like to waste money, because money is hard to come by. And I think that from my past experience, and I would guess, even yours, that generally speaking—although there are some exceptions—when the Democrats have a good candidate for public office, and we have a good candidate for the same office, between the candidate and the political parties, they can almost match one another dollar for dollar in their campaign spending. Now, admittedly, there are exceptions, but generally, I think that is the rule. The equalizer is the responsibility of the political party to see that their candidate is adequately funded without wasting a lot of money. And there are a lot of pressures in a political party to keep us from wasting money. For example, if we want to pour a disproportionate amount of money into a gubernatorial race, we have two Senate candidates or two Senators who apply pressure to keep us from putting too much money in a gubernatorial race when it should be spread out across the board. We have congressional candidates, we have local candidates, we have county party chairmen, State party chairmen, and local party chairmen. There are a lot of pressures within the political party itself that keep those things from getting too far out of whack. So I understand what you are saying, Senator Mathias. It is conceivable that it could happen, but it is not very likely because of the conflicting pressures within the political party.

Senator FORD. Chairman Richards, this is envy and not fault. I read in the paper the other day that your money is coming in faster than you can spend it, how does it feel?

Mr. RICHARDS. The Washington Post said that.

Senator FORD. They quoted you. Are you saying that you were misquoted?

Mr. RICHARDS. They said we were embarrassed by riches, Senator. We are not embarrassed by them.

Senator FORD. I would like to be filthy rich, wouldn't you? [Laughter.]

Mr. RICHARDS. We are doing pretty well, and we are glad we are in the position we are, and we are going to continue to raise money. What we are really proud about is the fact that 70 percent of our money comes from little givers, $25 or less.

We have developed a very fine direct mail program at the national committee, and I think, that is the direction the Democratic National Party is moving, that is the direction that good State parties are also moving, to attract the little giver. We are really not going after the big giver, and we are just a few years ahead of the Democratic National Committee and soon they are going to be in the same position we are. So I do not feel too sorry for them right now.

Senator FORD. You are very positive and appear not to have any fear when you make your statements relating to independent operations, that answer to no one, et cetera, et cetera. You are really firm in that statement; am I right?

Mr. RICHARDS. Yes, sir, I am.

Senator FORD. Now, you referred to Democrats for the Eighties, and the fundraiser they had the other night, for Averill Harriman's birthday. But the Democrats for the Eighties was formed to offset and at least attempt to equalize the other side against these independent organizations that you are so apparently set against.

Mr. RICHARDS. Yes, sir.

Senator FORD. Now, is David Broder a pretty accurate reporter, in your judgment?

Mr. RICHARDS. I think he is. I think David Broder is one of the finest political reporters.

Senator FORD. In a recent article in the Washington Post, David Broder quotes the newly appointed White House Political Director—Mr. Rollins; is that correct?

Mr. RICHARDS. Ed Rollins, yes, sir.

Senator FORD. With regard to groups such as NCPAC, as follows, and I quote: "We very clearly will be meeting with them regularly to tell them where we are headed and let them tell us what they are doing."

You have been quoted in various articles as always being opposed to the involvement of such groups. How do you square your statements about such involvement with Mr. Rollins' statement from the White House?

Mr. RICHARD. Frankly, Senator, I believe one of the main reasons that some of the independent expenditure groups from the right were courting Lyn Nofziger's office and now Ed Rollins, is because of their difficulty with me. I have been State chairman three terms in my State. I have previously been a candidate and a campaign manager. And I find it obnoxious to the whole scheme of things to have people coming into a campaign, either for you or against you, who can buy ads that say what they want to say, for you or against you, without accounting to anybody. It is an interloper coming in here from the outside, interjecting himself into the middle of the campaign as if he were a candidate. And I do not like that because the candidate cannot be responsible for him. I think that in a good, plain, heads-up political campaign, a candidate or a party should be responsible for every word that is said, every ad that is printed, every radio commercial that is developed, and you cannot do it under those circumstances. I think we have got to separate ourselves from them, and frankly, if we take the limit off what the parties can do, the parties can then assist the candidates and assume the responsibility, and we will freeze these independent groups out. That is my main thrust for removing the lid from the party.

Senator **Ford**. The quote in David Broder's column of Mr. Rollins seemed to be diametrically opposed to the position that you have been taking, and it makes it difficult. I am not criticizing—but I think you have to take advantage of what is there, you have to work in the real world—but it gives us pause to try to make some kind of a rational judgment on how to accomplish the end result that I think you are looking for; that is—parties able to support the candidate, a two-party system or a three-party system, debates on the issues, responsible candidates, and a responsible campaign, that lets the voters make a judgment on election day. But you find a major entity now in this country in the political arena diametrically opposed, apparently, to these goals, and it makes it a little bit frustrating.

Mr. **Richards**. I understand that, Senator, and you know, that is the difficulty I have had, because philosophically, I find myself in agreement with a lot of these conservative groups. My difference is that I tell them if they want to be a candidate and run a campaign, go out and sign up as a candidate, but do not interject into someone else's campaign without the candidate's knowledge and without his consent.

But I presume it depends on who your constituency is and what your background is. I am very adamant against it, and to be honest with you, that has probably been the biggest source of antagonism toward me as national chairman since I have been chairman of the party. But I think it is a battle I have got to fight through, because I think it is right.

Senator **Ford**. Let me ask both of you this question, and then I will stop, Mr. Chairman. There may be some other questions. Do either of you object to written questions that we might send to you about possible changes in the law?

Mr. **Richards**. No, sir; I think that would be helpful.

Mr. **Harrington**. No, sir.

Senator **Ford**. I would like to do that. Let me ask you, then, how do the two of you feel about soft money spending by corporations, by unions, and that sort of thing, in the political atmosphere of the day?

Mr. **Harrington**. Well, I think we are somewhat on the forefront of these developments in the use of corporate and union treasury money in the political process, so it is again kind of hard to judge whether there is an evil to be corrected or a need for regulation. Of course, the basic concept is that these funds may not be used in connection with Federal elections, and to the extent they are used, they would be used primarily in connection with State and local election activity or other causes that have nothing to do with Federal elections within the meaning of the law. And in that respect, we fall back on what State laws say. About 20 percent of the States, I think, prohibit the use of soft money in connection with State elections, as well; other areas do not. I guess at this point, I would say we have certainly not reached a conclusion that there is a need for Congress—for Federal legislation to regulate activity with respect to State and local elections. There perhaps is some need for more clear definition of what is in connection with a Federal election, so that political committees and national political parties would know where they can move safely as far as the Federal law is concerned and where they should not tread.

Mr. RICHARDS. Senator, I would take a little different point of view on that. I presume you are talking about in-kind contributions that either business or labor will make into a campaign.

Senator FORD. It could be inkind, as I understand it; it could be a cash contribution, a corporate check, to a sponsored political committee for certain costs.

Mr. RICHARDS. I think the group of political action committees has been a healthy thing for the country, when individuals who work for a business can contribute $10 and have that business entity give it to a political party or to a candidate. It gives them an opportunity and a vehicle to get involved in the processes.

We are concerned in our party about the tremendous contribution that organized labor rarely makes to our candidates—but rather to the Democratic candidates—that comes outside of the scope of some of these things. For example, the "Get out the vote drive"——

The CHAIRMAN. Well, Chairman Richards, in fairness, I have to say I am one of the exceptions to that rule, and I am very grateful for it.

Mr. RICHARDS. But for example, if COPE puts on a telephone campaign to get out the vote, that is just as much a part of that campaign as if they gave money to the political party and the political party put on the "Get out the vote" drive. So I think we need to look at this kind of contribution the same as we look at the hard dollar contributions. It has the same impact on the overall results of the campaign; why not treat it the same as hard dollars?

Senator FORD. I have no further questions.

The CHAIRMAN. I just have one further question, and it is really for each of you. You both talked about direct mail and the importance of direct mail, and I think anybody who observes the political scene today knows that that is one of the dramatic developments of the political operation. And I want to know whether you think it is a positive trend. There is no question it raises money. I am not asking whether it is successful. But is it positive in terms of the system? Do you think that an individual, direct mail contributor is really motivated to a greater interest and a greater participation in the political system for having contributed a few dollars? Does he just lock himself into that candidate without paying much attention to all the surrounding circumstances and to the debate on the issue as the campaign continues?

Mr. **Richards**. I am inclined to believe, Senator, that most people who give to a direct mail campaign are motivated by the contents of the letter that they receive. Skilled direct mail companies and individuals can motivate people to give $10 to almost any kind of a cause. And generally, the direct mail system is good because, it typically is directed toward the small contributor, a person who gives to an idea or a candidate or a party who really does not expect anything in return. He is not trying to buy influence, and I think that is good. But I think we have reached a point in this country where the direct mail has become almost as much of a problem as it is a value. People are being inundated by direct mail from all kinds of sources, and I do not know how every group gets the other group's mailing list, but once you give to a political party or a candidate, all of a sudden, you find yourself on 10 lists. And the biggest complaints and the most common complaints I receive at the national committee are from individuals receiving too many fundraising letters. Many of them are not even from us. Some way or another, these people who operate the computers give or sell or do something to disseminate those names all over the world, and I think it is reaching the point where we may destroy the technique of raising money by this device, because it has become a nuisance to a lot of people.

The **Chairman**. Mr. Harrington.

Mr. **Harrington**. Mr. Chairman, I hope Chairman Richards will try and relieve some of the burden on the recipients of the direct mail by letting up on some of his direct mail in the coming months.

I guess that we have no reason to feel that it is not a legitimate area of fundraising, and feel that it does provide an opportunity for small givers, for people who are not going to be involved in fundraising in some of the more traditional means of face-to-face solicitation or fundraising events or whatever. I would agree with the import of the chairman's question that many times, there is not a real depth of commitment, an understanding of the issue, a true identification with the cause of the candidate or the party or whatever, and to some extent, it is susceptible of who can write the most clever letter on the most outrageous issue and prompt a response. But if handled responsibly by those who use it, it is a responsible and useful means of fundraising.

Mr. Chairman, if I could make one other response to the issue that was raised—as I say, we have not had an opportunity to consider it extensively, by any means—but the possibility of taking the lid off of giving to candidates by political parties. I agree with Chairman Richards that the situation will change from time to time, and we have every reason to believe that the situation will change very soon, as far as the bank balances of the national parties. But even if that is the case, I think that such a change would, quite possibly, fly in the face of the purpose of the law to limit the impact of large volumes of money in deciding who holds public office. It would be quite at odds with the concept that is embodied in every respect in the act, and it would also lend itself to emphasizing from time to time the phenomenon that Chairman Richards has noted, that there will be a disparity in the financial means, from time to time, of the party. The out party may have less of a fundraising ability than the party that presently has a representative in the White House. And we certainly do not increase the strength of the party by emphasizing a disparity that may be a temporary thing—a year, months, administration, or whatever.

The CHAIRMAN. Just one final question that arises from Chairman Richards' statement. We all get too much of this mail. I find myself getting fervent appeals from Fritz Mondale, Jerry Brown, Barry Goldwater, Jr., saying his daddy wants me to be for him; and Tip O'Neill. And the President has written me a couple of times—unsuccessfully, I might add. But I find when I get home in the evening that the bottom of my wastebasket has been well padded by my wife sorting the mail. I do not think she opens the envelopes anymore; she has gotten to recognize the system. This takes it beyond the point where it becomes a credible thing. But I am really not so much concerned by that, because the wastebasket takes care of that problem sooner or later, as I am by the sort of pitch it has made. And since I am liberally showered by these letters from both sides, I notice that there is a kind of commonality in the emotional pitch that is made. They typically start out, "Did you know that there is a wrecking crew in Washington about to go down to the National Archives and tear up the Constitution?" And I cannot understand the philosophy—I am sure it works; practice shows it works—that if you say that in four pages, it somehow is convincing. If you said it in one paragraph, it would not convince anybody.

I am not condemning the process, and it would not do any good if I did, anymore than King Canute ordering the waves to cease, because it is a process that we have with us, and it is going to be with us for a while. But how can we convert this process to a more thoughtful and balanced discussion of issues than this kind of just blatant attempt to scare people and use fear and ignorance, really, as a means for getting money?

Mr. RICHARDS. Senator, I have some of my own feelings on this matter, and I share your concern. I think too many times, those people who are sending out direct fundraising letters are really not in politics, they are in business. Their business is raising money by direct mail. I think disclosure——

The CHAIRMAN. But politicians let their names be used for it.

Mr. RICHARDS. Right, I think that disclosure through the FEC is a significant deterrent, because when people can see what percentage of the dollar they raise goes for administrative costs and what part goes for candidates and political parties, pretty soon they are not going to give to some of those causes anymore, because they will realize they are just in the business of raising money.

It is a tough problem. There are people who write to me all the time who say they receive direct mail solicitations from the "Support the President Committee." Well, I do not even know who the "Support the President Committee" is. That is some group out there that wants to use Ronald Reagan's name to make money because they think it will make money. They will do it to anybody who is in office or any candidate or any cause, and they really have no connection with us. That all gets back to my major concern of responsibility for parties. If parties can really be responsible, we can point out some of these people who are not responsible, and we can say, "If you give to that committee, that money does not go to the Democratic party, and it does not go to the Republican party." It goes to the various groups for whatever purposes they deemed important. I think that is part of the solution to the problem. I think taking the lid off what the parties do and making them responsible and making them accountable to the American people is really the best answer.

The **Chairman**. I think that is a very valid consideration.

Senator **Ford**. Cf course, we have the professional campaign manager now, who comes in and does all things for all people. They send out a brochure next time as to how many winners they had last time. It is effective and they are employed. Is it proper or legal for a direct mail house to loan money to a candidate to be repaid by a fundraising letter it is going to send out over the candidate's signature?

Mr. **Richards**. I do not know, Senator.

Senator **Ford**. I do not know either, but I hear rumors of that happening. Apparently one case is about to spring because the interest is piling up on the loan—it just sends out more letters, and the debt keeps increasing. I just wondered if that is proper or legal.

Then, I might just say to you, Mr. Richards and Mr. Harrington, the FEC report of PAC's collections for the first 6 months of 1981 was approximately $31 million, as I recall, somewhere in that area. First, was NCPAC; second was Senator Jesse Helms' Congressional Club, and they raised approximately 20 percent of the total. I think both are ahead in the Presidential year—or at least, if you track the reports in this 6 months and the previous six months, they are ahead or at least equal. It is interesting how well some are doing. Then you go back to what Senator Helms has said, $7 million raised finally netted him about $1.5 million. That gets to the point you made a few moments ago.

The **Chairman**. After the first $5 million, you can keep a little.

Mr. **Richards**. There is a theory with direct mail raisers; it does not matter what it costs as long as you get enough in the end to do the political job you want to do. So if your direct mail cost is 80 cents on the dollar, if you end up with a net of enough dollars, the program has been justified. That is part of the problem.

Senator **Ford**. Or enough votes. If they get the 80 cents, and you get the votes, why, everybody is happy.

Mr. **Richards**. But you know, Senator, at our committee, it costs us 26 cents on the dollar to raise money. I think these reporting procedures we are talking about enable political givers to compare; if you give to one committee, where it costs them 26 cents on the dollar for administrative costs, and the other committee is 87 cents, pretty soon that guy who is charging 87 cents on the dollar is really going to be out of business. So disclosure is a very important part of this thing, and I appreciate that.

Mr. **Harrington**. Senator Ford, I think not only do we have the means for disclosure, and they ought to be emphasized, but as so often, when we are limited with what we can do by the Constitution, and rightly so, we depend upon the gentlemen and ladies of the press to analyze the information and make it available to us in a way that lets the people know what the impact of activities of independent committees is, or of large givers, and for that matter, what purposes, causes, individuals, they are serving and draws the distinctions that can properly be drawn.

The **Chairman**. Thank you very much, gentlemen. You have made a great contribution here today.

Senator **Ford**. Thank you very much. I hope that you will remember that there may be some questions from time to time before we close this hearing and go to markup, that we would like you to respond to I would appreciate it very much.

[The prepared statement of Mr. Richard Richards follows:]

PREPARED STATEMENT OF RICHARD RICHARDS, CHAIRMAN, REPUBLICAN NATIONAL COMMITTEE

Mr. Chairman, I want to express my gratitude to you and to the other members of this committee for the opportunity to testify before the committee. I know that the members share my interest in the integrity of our political process. As members of the Senate you realize that vital role of the party in our political process. I hope that my testimony will, to some small degree, illustrate the difficulties of political parties being treated like regulated industries.

I am an attorney, but not a technical expert on the Federal Election Campaign Act. The fact that an attorney with substantial political experience cannot claim to be an expert on the Act immediately highlights the most fundamental difficulty with the Federal Election Campaign Act. When Congress passed this Act, it created a new legal speciality—Federal Election Law attorneys. This small cadre of individuals seem to be the only ones who understand completely the myriad rules and regulations.

Earlier this year, I appointed a 10-member committee of the Republic National Committee to study election reform. (Mr. Ernest Angelo, Jr., Republican National Committeeman from Texas, is Chairman of the Committee.) One of the areas this committee will study in depth is the Federal Election Campaign Act. I expect this committee to be reporting to the Republican National Committee proposals for changes in the Federal Election Campaign Act. Detailed suggestion for changes from the Republican National Committee must await this committee's report. I hope at that time that we will have specific recommendations on simplifying if not deregulating the law.

For these reasons, I will not go into a great detail, but discuss the general aspects of the law. First, let me clearly state that as Chairman of the Republican National Committee, I do not recommend or advocate the abolition of the Federal Election Commission, nor do I advocate or recommend a reduction in its budget to such a level that it cannot attempt to perform its appropriate functions. I believe that the Commission has performed some useful functions, such as the disclosure of the source of campaign finances. Like most government agencies, I believe that it could perform its proper functions with more economy.

If the Committee members remember only one point from my testimony today, I hope that you will remember my request that this law not be amended with changes effective prior to January 1, 1983. I do not believe that I can emphasize my desire in this area too strongly. Any legislation modifying this law that would be effective prior to the 1982 elections would, without question, cause substantial confusion among candidates and party organizations. This law has been modified after every election cycle since its enactment. A screw has been turned here, a bolt tightened there, a patch placed in another location. Permit candidates and the party organizations to conduct their functions under the same rules for at least two consecutive election cycles. Any regulations which would be promulgated under changes in this law could not be in place early enough for their adequate dissemination to those individuals and committees operating under it. Better imperfect rules than rules no one can understand. Laws regulating politics, the fragile fabric of political discussion, should not be enacted in haste and without careful, full consideration. Please consider this plea before enacting legislation effective before January 1, 1983.

I would like to briefly discuss some changes that, from my perspective I believe this committee would be wise to consider. Most academic and journalistic observers of political parties believe that the Federal Election Campaign Act has had a detrimental effect on party organizations. I do not believe that it is wise to have legislation which has this effect on the basic vehicle for organized political expression in the United States. To strengthen the role of political party institutions, I suggest the following changes:

1. The elimination of limited spending on behalf of candidates by party committees, or substantial increase of party expenditure limits, for example:

Raise the minimum expenditure limit for the national and state party committees for Senate candidates.

2. Include all party committees in the pins, bumper sticker, and get-out-the-vote exception to the definition of contribution in federal elections.

3. Increase party committee contribution limits to House candidates.

4. Increase party committee contribution limits to Senate Candidates.

5. Exempt legal, accounting and administration expenses from the definition of contribution or expenditure for party committees. If you pass laws requiring lawyers and bookkeepers, help us pay for them outside the various limits.

These proposed changes are designed to increase the role of the political party, vis a vis other political organizations in the political process. I do not believe I need to discuss with the members of this committee the importance of strengthening the role of political parties. The underlying theory of contribution limits or expenditure limits as recognized by the Supreme Court is corruption or the appearance of corruption. It is inconceivable to me that a candidate can be corrupted by, or viewed to be corrupted by a contribution from his or her political party. I do not advocate the raising of the individual contribution limits to candidates or political parties. The role and power of the "fat cats" in the process has been diminished. The Republican Party is the party of the small donor. The average contribution to the Republican National Committee is less than thirty dollars. We have no desire to return to the pre-reform money broker days.

In short, I believe the objective of the Congress in amending the Federal Election Campaign Act should be to put greater responsibility on political parties and hold them accountable to the American public for the quality and performance of their candidates, discussion of the issues, and all fund raising and campaign spending activities. It will be good for the country. Campaigns will be conducted on a higher plane—I think they will be more truthful and straight forward. They will be more pertinent on the issues of the time and all of these things will inure to the benefit not only of the public but the political parties as well.

Provisions in the Code that tend to relieve political parties of responsibilities that should rightfully be theirs I think do a disservice to everyone and especially the voters. It doesn't make sense for the Congress to limit campaign expenditures for political parties who have a major responsibility in the campaign process and at the same time place no limits on independent expenditure groups who have no responsibility whatsoever and who have no accountability either to a candidate or the political party. Much of the criticism has been aimed at independent expenditure groups of the conservative variety. We are now seeing the development of independent expenditure groups of the liberal variety. I am afraid they will raise millions of dollars and spend them fighting each other, not talking about legitimate issues of the campaign. That would be most unfortunate for everyone. The reforms I have indicated I think will avoid that probability and we will be able to look forward to good, clean campaigns talking about the pertinent issues.

I will be happy to entertain questions at this time.

The **Chairman**. The committee now has the great pleasure of welcoming two colleagues, Tom Curtis and Neil Staebler. Mr. Curtis was a representative from Missouri; has also served as the Chairman of the Federal Election Commission. Mr. Staebler is a representative from Michigan and has served as a Vice Chairman of the Federal Election Commission.

It is a great pleasure to see them both back on Capitol Hill, and prepared to give us their distilled wisdom and knowledge to solve these problems.

How would you like to proceed?

Mr. **Staebler**. I defer to my Chairman.

STATEMENT OF A PANEL INCLUDING HON. THOMAS B. CURTIS, FORMER CHAIRMAN, FEDERAL ELECTION COMMISSION, ST. LOUIS, MO., AND HON. NEIL STAEBLER, FORMER MEMBER, FEDERAL ELECTION COMMISSION, ANN ARBOR, MICH.

Mr. CURTIS. I want to thank the committee for this opportunity and commend it for holding hearings on this important subject.

There are six points I would like to make. One, that if the Federal Election Commission is to be killed, that it be done in an orderly and considered fashion through the legislative committees and not the appropriation committees. Second, that some thought be given to what happens when we revert to the Corrupt Procedures Act as the technique for Federal regulation of Federal elections. Third, that some thought be given to the fundamental differences set out in the Constitution between the election of Members of Congress and the selection of the President and Vice President. In respect to the Executive Offices the Constitution gives plenary authority to the States with no authority to the Federal Government except when there is no clear winner, and then the power lies totally in the two Houses of Congress, with no authority in the Federal Executive. The difference between that and the election of Members to the U.S. Senate and the U.S. House of Representatives, which gives authority to the States, but overriding authority to the Congress, "* * * by law to make or alter" the regulations of the States, with no authority in the Federal Executive except to veto, which is ineffective against a two-thirds vote of each House. The Congress has seldom used its preemptive authority over congressional elections, preferring to allow the States to make the regulations and conduct the elections of the Members of the two Houses.

The point is that the Federal Election Campaign Act Amendments of 1974 and 1976 provide only an optional system for the election of President and Vice President, available to the candidates for these offices and to the political parties which are creatures of the States, not of the Federal Government, which the parties and candidates may accept or reject at their pleasure. It is highly questionable whether the Federal Government can by contract—and that is the way we have attempted to do it—enter an area where it has been given no constitutional authority to act.

The fourth point, an umpire can accomplish a great deal through establishing fair rules, common understanding, and voluntary compliance. I think much of the success of the FEC—and it has been very successful, in my judgment—has come from common understanding and voluntary compliance.

The fifth point, I think the first annual report of the FEC to the Congress establishes the reasons for this success and the subsequent annual reports which have followed the format of the first report, which is required by statute, confirm it. I would urge the appropriate committees of Congress to hold public hearings, possibly joint hearings, to save time, on each annual report of the FEC, just as the Joint Economic Committee holds public hearings on the President's annual economic report. The election process is sufficiently important to our society and to those abroad, who look to us to perfect it to justify this effort.

Sixth, the clearinghouse function which the GAO originally set up and the FEC took over by law should be fully funded. The authorities in the 50 States who were responsible for regulating elections, I think will testify almost unanimously to the value of this function, to exchange information about the problems and technicalities involved in conducting fair elections. I am certain that the scholars the world over have been taken aback by the thought that this important approach to rationality might be abandoned.

In conclusion, I would like to ask the committee, to have included in my remarks for the record a Law Review article, "Reflections on Voluntary Compliance Under the Federal Election Campaign Act" appearing in the summer 1979 Case Western Reserve Law Review, which I wrote, expanding on some of the ideas I have expressed.

Senator **Ford**. Mr. Curtis, your report will be included in the record. Do you have it available for the stenographer?

Mr. **Curtis**. Yes; I have supplied a copy.

[See Appendix III.]

Senator **Ford**. All right, thank you.

Mr. **Curtis**. Let me also urge students to look up and read the report of the Twentieth Century Fund Task Force on Financing Congressional Campaigns, "Electing Congress, the Financial Dilemma," of 1970, which Neil Staebler and I cochaired. The issues it presents are still current.

Thank you, Mr. Chairman.

Senator **Ford**. Mr. Staebler.

Mr. **Staebler**. Thank you very much, Senator Ford.

Anyone who has gone through a political campaign will remember in connection with every program and every policy and every action of a candidate, there is a wave of criticism coming both from within the campaign and from outside it. Politics involves change; change and criticism are inseparable.

The Federal Election Act, after 10 years, and the Federal Election Commission, in its 6 years of existence, are inevitably targets of criticism. They are also the source of a tremendous record of accomplishment. This committee is, of course, interested in both.

Last April, the Citizens' Research Foundation, which has spent 30 years collecting information about money in politics and examining its effects upon politics, sponsored a conference in Washington on the Federal Election Act. One of the outstanding papers at the conference was presented by Bill Loughery, and dealt with the variety of criticisms levied on the act and the Commission. I offer an extract of that paper, entitled, "Reform as Bogeyman," to the committee for its consideration. Mr. Loughery was formerly the Deputy Director of the Federal Election Commission and is now a legislative assistant to Senator Arlen Specter. I have delivered numerous copies.

Senator **Ford**. It will be included in the record, Mr. Staebler.

[See Appendix IV.]

Mr. **Staebler**. I would like to utilize my brief time before the committee to underscore the positive accomplishments of the act and the Commission. I would like to call attention to five great changes that have been brought about.

First, the aura of mystery and suspicion surrounding political money has been removed. Contributions and expenditures by candidates and committees are now subject to public disclosure. The amounts and the sources are visible. People agree generally that disclosure is desirable, but many forget it is not automatic just because the law requires it. Many candidates and committees tend to miss deadlines, provide incomplete information, gloss over embarrassing detail. The Commission follows up by filing timely, accurate, and complete reports. The reports are made available to the public, and the press utilizes them.

In the course of following up inadequate or inaccurate reports, the Commission incurs considerable criticism. It should be noted that the Commission is in a much better position to bear up under this criticism than would an administrative official pursuing the same course of action.

Second, outsized contributions which were formerly commonplace in American politics, have always provoked allegations of influence and corruption. Whether warranted or not, large contributions are suspect in the public mind and receive press treatment which heightens the suspicion. The act met this problem head on by limiting an individual's contributions to a total of $25,000 in an election and to smaller amounts to committees and individual candidates. When there was no upper limit, cynicism about the intentions of political supporters was almost universal. With the introduction of limits, discussion of big contributors has almost disappeared. Now, attention is centered on the cumulative totals from industries and groups. The prevalence of modest individual contributions is one of the accomplishments of the act. Again, it should be noted that the observation of limits is not wholly automatic; it needs to be watched and enforced, functions which are performed by the Commission.

Third, with the advent of television and professional campaign managers, campaign expenditures have escalated at a dizzying rate, with each election since 1964 increasing at least 50 percent over the corresponding election 4 years previous. Many commentators had connected the increasing demands of politics with the increasing evidence of irregularities in the era that culminated with Watergate. The act has had a significant effect in moderating the rate of increase.

Fourth, for more than 50 years, largely ineffective campaign laws have had clear prohibitions on sources of contributions, particularly from corporations, labor unions, foreigners, anonymous givers, and contributions given in the name of others. Prior to the act and the emergence of the Commission as an enforcement agency, there was almost no attempt to check up on the source of political contribution. It is now evident that this problem has been effectively solved. Again, it is not one that disappears automatically, but requires some enforcement, which is supplied by the Commission.

Fifth, perhaps the clearest contrast between preregulation and the current handling of money and politics is observable in Presidential elections. Thanks to the $1 checkoff, public funds from millions of people pay the cost of general campaigns and half the cost of primary campaigns. So-called fat cat givers are not part of the campaigns. There is no guarantee the voters will like the successful candidates any better, but they no longer suffer from having candidates thrust on them from smoke-filled rooms. As is evident from recent Commission determinations that the Reagan, Carter, and Anderson campaigns are all required to make refunds for improper use of public campaign fund moneys and a pending suit initiated by the Reagan campaign against the Commission on the ground that reputations would be damaged by public disclosure, the Commission plays a significant role in making certain that candidates stay within the limits of the act.

There have been numerous proposals for amendments to the details of the act, including indexing contribution limits, reducing reporting requirements, clarifying definitions, and the like. Congress has several times passed helpful amendments, notably in 1979, when many of the shortcomings the Commission had observed in the act were corrected by congressional action.

The voting system is not static, and future amendments will undoubtedly be needed to keep the act abreast of change. I would hope the changes might be made piecemeal so that they could be tested by further experience.

I would like to make one more point about the act. For 64 years, beginning with the administration of Theodore Roosevelt in 1907, Congress tried to get a meaningful way to curb corruption. Those efforts were an almost total failure. Not until 1971, and the Supreme Court decisions of 1974–76, did a workable method of dealing with corruption emerge.

People have largely forgotten what the system was like prior to 1971. They are aware of the inconvenience arising from the present act. The great morass of prior years is only a faint memory. I am attaching another exhibit with the title, "The Campaign Finance Revolution," which describes some of the conditions that prevailed, and a quantity have been left with the committee.

Senator **Ford**. It will be included in the record with your statement, Mr. Staebler.

Mr. **Staebler**. The Federal Election Act should be examined and updated, but the examination should be made without partisanship and with the perspective of the great contribution it has made to cleaning up American politics and giving our political system a higher degree of credibility. It has taken us 100 years to get out of the quagmire we were in. I am sure the public does not want to return to it.

Senator **Ford**. Thank you very much, Mr. Staebler. The Chairman was called away to the phone. I will ask a question or two until he returns, with your permission.

Mr. Staebler, I was interested in your statement where you said, "I hope the changes might be made piecemeal so that they could be tested by further experience." I think your statement reflects a great deal of familiarity with the background and history of Federal election regulation. Let me ask you this. How successful would a disclosure system be if the administration of a disclosure law is separated from its enforcement entity. Some who advocate the dismantling of the Federal Election Commission say they want an administrator to handle disclosure and enforcement handled by the Justice Department. Do you have any comment on that?

Mr. STAEBLER. Yes, I do, Senator. Two things would happen. First, the ponderous procedures of enforcement by an administrative agency have been manifested in many occasions. I think the Commission frequently referred the cases to Justice for attention, and in considerable part, nothing was ever heard from them again. A prior circumstance has been tried. The Secretary of the Senate and the Clerk of the House were given responsibility for keeping the records over past years. Those records were largely inaccessible. It is really too much to expect an employee of an agency to be a vigorous enforcer of the shortcomings of his employer.

But a larger problem is involved. No matter what agency is designed—is picked to enforce disclosure—that agency is going to be partisan. You cannot escape it. And the beauty of the Federal Election Commission is that it is bipartisan. The parties watch each other. And if there is any tenderness toward one party exhibited by the Commission members of that party, the other members of the Commission are fully free and not reluctant to express themselves. They can do it through the same channels that the other members use. So that the public has a much greater safeguard that disclosure is as nearly total and accurate as it is possible to get it. I think the bipartisanship of the Commission is a very important element in securing the credible disclosure.

Senator FORD. You raise an interesting point.

Mr. Curtis, during your tenure, how often did you have a split of 3-3?

Mr. CURTIS. Not very often, as a matter of fact. May I comment on what Neil said?

Senator FORD. You certainly may.

Mr. CURTIS. Because this is to a large degree the purport of this Law Review article I wrote on voluntary compliance to which I referred. It is often forgotten that the first act—and it is still in the law—requires the Commission to try to bring about voluntary compliance, and I think that is really what has worked. I argue in that article that there are only two basic powers that are needed by the Commission. One is contempt for failure to file, and the other is perjury for false statements in the filing. The rest of the discipline lies in the public disclosure, plus the understanding on the part of the people of the fairness of the regulations and the desire of the people to comply with them.

One final point. A significant thing was put into the original act in regard to the Justice Department; and the record of the Justice Department, as I noticed other witnesses have pointed out, under the Corrupt Practices Act, was pretty sorry. But the act provides that the Justice Department must report back to the Federal Election Commission in respect to the processing of the matters that have been referred to it. This throws the spotlight on the process. Many an agency will testify—and I am sure they have—before the Congress that they refer things to the Justice Department and then, never know what has happened, have no way of finding out what has happened. Here, the Congress wisely provided that the Justice Department must respond within a certain period of time to the Federal Election Commission in respect to the various matters that have been referred to them for possible prosecution. This is all the discipline, I think, that is needed.

Senator FORD. Let me ask you this. We hear an awful lot, and I think probably our largest problem relating to candidates is the common thread in complaints that some of the FEC enforcement of the election law is characterized as "nitpicking." I will tell you of an experience I had when I ran. A friend of mine sent a check for $25, with no address. We knew basically where it was. Somebody said, "We have a check here for $25. You know him." The name was given, and I said, "Yes, he lives in Chicago." They made a phone call to get the address and the occupation, and they left off "Illinois." It said "Chicago." So they had a big, red circle around that little blank there, for "Ill." and I got a big headline in the local paper, "Ford's Federal Election Report Rejected for Irregularities."

Now, that, in my opinion, is nitpicking.

Mr. CURTIS. Absolutely.

Senator FORD. But that was damaging to me as a candidate. I ultimately won, and won substantially. But at the time it gave the press something to talk about, and that was, I think, basically uncalled for. But maybe if you want to get minutely technical, they were correct. I do not know how many other Chicagos there are, but if they ask you, "Chicago what?" you would say Illinois.

Mr. CURTIS. Senator, that is exactly what the act provides is this conciliatory approach that these kinds of things should not be done, and the nitpicking—sure, you have got to have these things accurate, but you do that through the conference approach, and the act says to the Commission you should do it that way. And I think where the Commission has not done it that way—and I daresay when we were chairmen and vice chairmen, we had some proper complaints like that—we have been at fault.

Senator FORD. Let me just ask one question, though. You are saying that under the law today, it is not necessary for that to happen, that the Commission could make a phone call or send a letter back and ask them to correct it, between the parties, unless it was a flagrant violation, in which case the Commission then should go forward.

Mr. CURTIS. Yes.

Senator FORD. So you are saying that there are no changes necessary under the statute to eliminate so-called nitpicking. It is basically the staff director at the Federal Election Commission or the Commissioners themselves that ought to set up a policy.

Mr. CURTIS. Exactly. In fact, it says so in the statute, when they say that you are supposed to bring about conciliation through this very thing the Senator is describing.

Mr. STAEBLER. Let me add another point. At the outset of the act, when the Commission was new and the staff was new, there was a considerable dedication to literalness in reading and interpreting everything in the act. I remember the early days of the Commission, when we spent a great deal of time trying to explain to some of our young attorneys that not every circumstance could be covered by an act. There were such things as de minimus situations. There were other things that were not to be taken with the absolute literal reading; they had to be considered in the light of the practices of politics.

One of those situations was alluded to today. I heard one of the people testifying, commenting on the veteran in the old folks' home who got persecuted because he did not file. I remember that case. The man's name was Samuel Adams, and he was in Vermont. That is a great name in Vermont. And our enforcement people went after him hammer and tongs because he was regarded as a pretty likely candidate with that good a political name. It was only later it was discovered he was in an old folks' home, had not spent any money, and in fact, did not have the price of the stamp to reply to the Commission's warning that he was violating the act. Well, things like that in the early stages need to be recognized as part of the learning experience.

Let me give you another case. This was not the Commission's fault so much as the act itself. In the 1976 campaign, a great deal of furor was occasioned when Congressman Koch, now mayor of New York City, had a lapel button made, "Vote for Koch and Carter." Well, that was illegal under the act. You could not make a contribution to the Presidential campaign. It was all done by public funds.

The CHAIRMAN. It also shows the law is practical. He did better this time. [Laughter.]

Mr. STAEBLER. So we debated and debated, trying to find some explanation, recognizing that this was a triviality, and it was really not done to advertise Carter so much as Koch. And I remember, the Commission finally arrived at the Solomonic conclusion that they could not give any reason why it was all right, but it would not be prosecuted. But we followed it up with a recommendation to Congress that the act be changed to eliminate small and trivial items of campaign advertising like bumper strips and lawn signs and lapel buttons similar to the one that Koch had utilized, and that was done.

So this has been a learning experience for the Commission; it has been a learning experience for Congress. We had to find out what works and what was silly, and I think we have gone a long way toward getting a serious and a workable act. And it will always have to be amended and changed, but certainly, the alternative is almost unthinkable.

The CHAIRMAN. Gentlemen, one of my primary sources of inspiration is Dr. Samuel Johnson. Dr. Johnson once said that, "Nothing is so conducive to a good conscience as the possibility of being observed." Now, would you say that the Federal Election Commission helps us all in the political world to have better consciences because we are being observed?

Mr. CURTIS. Yes. No question.

Mr. STAEBLER. Senator, I was State chairman and national committeeman, and I recruited hundreds of candidates and tried to explain the political realities to them. And one of the things I always tell candidates is that election laws are not just designed to preserve the public welfare; they are also designed to preserve the candidate's welfare, because when candidates are competing with each other, if the other candidate has got some shady operation going, then the partisans go and say, "Well, look, you cannot stand by and let that happen; we have got to meet him." So when you have a campaign law that works, every candidate is protected from the possibility that he or she is being undercut by various means, and furthermore, the candidate can go to bed at night with a clear conscience that his or her own position is a proper one, and they have not compromised it by anything they have had to do.

The CHAIRMAN. Are you aware, however, of any unintended consequences of the Federal Election Commission? For example, there are some critics of the FEC that say it has had a chilling effect; that it has created distortions in the way candidates conduct their campaigns; that therefore, it has perhaps distorted the choices that voters make. In other words, it actually is doing the very thing that it is designed to prevent. Is there any validity to those objections?

Mr. CURTIS. I do not believe so as it relates to the two major parties. But I am very concerned, and I do not know what the answer is, to the points that Gene McCarthy was making. And in fact, one of the things that keeps the two parties straight is the fact that there is a potential third, fourth, fifth, sixth new party coming in. There is where you run into a chilling effect, I think. The very disclosure we are talking about probably works the other way a bit in letting these groups start up. I listened to the testimony the committee has just received in regard to outside funds and activities and so forth, and I could not help but think that there is one thing that is providing some discipline for the two political parties.

So back to the point, I do not think it has been a chilling effect at all on the major contenders, but in looking at the whole political process and the value of having the potentiality of third, fourth, or fifth parties coming in, yes, I think a lot of thought should be directed to this. I do not know what the answer to that is.

The CHAIRMAN. But it is your feeling that independent movements are discouraged?

Mr. CURTIS. Yes, I think there is an element. There can be; I guess that is the way I want to express it. This can happen. And I think again, going back to Gene McCarthy and his group and some of their testimony, they were making some pretty important points. And note how the States, all of them, have tried to have legislation on elections in such a way that there is a possibility of new parties starting up. It is that fact——

The CHAIRMAN. Well, I think that is a serious area for discussion. This was predicted, really, by Adlai Stevenson at the time the Senate was debating this law, and he and I joined together on several amendments. We did not prevail; we did not persuade people that we were right, that the law would discourage third parties and independent movements to an unhealthy degree. I think it is a good point.

Mr. CURTIS. Yes. It has not actually happened yet, I believe, but as I say, it is something that is a worrisome thing that needs watching.

Mr. STAEBLER. May I add to that, Senator? The chilling effect is wearing off. There is a chilling effect on various kinds of contributors. The kind who wants to give to both parties but does not like to be caught at it has been chilled. And in some one-party States, or where one party is overwhelmingly predominant, the partisans of the other party are chilled a bit when they contribute. That occurs even without reporting, after it gets known, and the only answer to that in these overwhelming States is just to keep at it and find enough courageous people who are willing to take the chill.

In our State, we found as recently as 20 years ago that any Democrat in several counties who was found to have contributed any money was immediately fired, whether public or private employment. And we finally managed to bring the level of tolerance up in the State, so that that does not occur any more. I can remember my banker sort of put pressure on me when they discovered I was pretty active in the Democratic Party in the early days, but that has pretty well disappeared. The people were accustomed to the two-party system, and where they are not, you just have to undergo a little chilling for a while until it corrects itself.

Mr. CURTIS. I had a similar experience as a Republican in Missouri.

The CHAIRMAN. One other complaint that is made is that the rules for disclosure and reporting and accounting and all the detail has an intimidating effect on candidates and has created a campaign technocracy, As Senator Ford said, you call in the professional manager today——

Senator FORD. I did not pronounce that word.

The CHAIRMAN [continuing]. Had a little trouble with it—but that all of this becomes a kind of a barrier, a further barrier. There is a sort of a mystique about the whole system anyhow, and not everybody understands it, and if you have accountants and lawyers and professional managers and advance men and all the paraphernalia of a modern campaign, that it is adding a further barrier to the public's understanding of the process and to the public's participation in the process.

Mr. CURTIS. I do not think there is any question that the complexities because of the news media are of that nature, but that would be so whether there were this way of dealing with it or the other way. But I have observed, and there has been a lot written on the subject, that the two political parties are extraordinarily weak, and that these professional campaign managers can come in and get someone elected to the U.S. Senate, or governorship——

The CHAIRMAN. Or ruin somebody; or ruin an otherwise good person.

Mr. CURTIS. Exactly. And the political parties are just ignored. And I have sat in on many a meeting where it has been said just that, the heck with what the political parties may want or anything else; give us the money—I am quoting an election man, a campaign manager, "Give us some money, and we will get the guy elected, particularly if he will stay out of the State while we broadcast the TV spots in," and so forth.

Yes; there is a lot to be looked at here, but again, I am not deeply worried about it if it is exposed, if it is out in the open.

Mr. STAEBLER. A lot of the mystique was manufactured by some of these political practitioners who were building up the need for hiring them. I talked to quite a few candidates in the early years of the Commission, and I found some that had been greatly worried. After a couple of elections that seemed to almost disappear. And furthermore, one of the reasons it disappeared is that both parties had been putting on training programs. I am not fully up to date on the Republican, but the Democratic Party has a series that has been going on for potential candidates, and one of the sessions deals with reporting and requirements and so forth; it is not hard for people to understand, just given an hour or two of time and explanation. And the fact that the Commission itself has put on programs trying to help people understand, and the Commission's policy of not prosecuting people who make honest mistakes. The Commission early, as Tom has pointed out, adopted the policy of trying to get voluntary compliance, and when it found that there was a violation resulting from misunderstanding or inadvertence, the Commission never levied any penalty on the operation. It still follows that practice.

The CHAIRMAN. So you think the Commission has a role in helping this problem rather than in exacerbating it?

Mr. STAEBLER. Yes, definitely.

The CHAIRMAN. Well, I would just in closing want to make one purely personal comment to the Senator from Kentucky. I have now lost all faith that there is anything sacred in this world. I look across the witness table at Tom Curtis and see that he has abandoned his Ben Franklin glasses, the trademark by which he was known for a generation.

Mr. CURTIS. I cannot see otherwise. [Laughter.]

The CHAIRMAN. I do not think anything can be sacred with Tom Curtis having changed his style of glasses.

Mr. CURTIS. I have got to be able to see. [Laughter.]

The CHAIRMAN. Gentlemen, thank you very much.

Mr. CURTIS. Thank you. It was a great pleasure.

Mr. STAEBLER. Thank you.

The CHAIRMAN. The other witnesses for the day have been advised to be here at 2:15, so the committee will stand in adjournment until that hour.

[Whereupon, at 11:50 a.m., the committee was recessed, to reconvene at 2:15 p.m. this same day.]

[The prepared statements of Hon. Thomas B. Curtis and Hon. Neil Staebler follow:]

PREPARED STATEMENT OF HON. THOMAS B. CURTIS, FORMER CHAIRMAN, FEDERAL ELECTION COMMISSION

There are six (6) points I would like to make before this committee

1.That if the Federal Election Commission is to be killed it be done in an orderly and considered fashion through the legislative committees of the two Houses not the Appropriation Committees.

2. That some thought be given to what happens when we revert to Corrupt Procedures Act as the technique for federal regulation of Federal elections.

3. That some thought be given to the fundamental differences set out in the Constitution between the election of President and Vice-President (Article XII), which gives plenary authority to the States with no authority to the Federal Government except when there is no clear winner and then the power lies totally in the two Houses of Congress with no authority in the federal executive, and the election of members to the U.S. Senate and to the U.S. House of Representatives (Article XVII, Article I, Section 2, and Article I, Section 4), which gives authority to the States but overriding authority to the Congress . . . "by law to make or alter", the regulations of the States, with no authority in the federal executive except the veto which is ineffective against a ⅔ vote of each House. The Congress has seldom used its preemptive authority over congressional elections preferring to allow the States to make the regulations and conduct the elections of the members to the two Houses of Congress. The point is, that the Federal Election Campaign Act Amendments of 1974 and 1976 provide only an optional system for the election of President and

Vice-President, available to the candidates for these offices and to the political parties (creatures of the States, not of the Federal Government), which they may accept or reject at their pleasure. It is highly questionable whether the Federal Government can by contract enter an area where it has been given no constitutional authority to act.

4. An umpire can accomplish a great deal through establishing fair rules, common understanding and voluntary compliance. I think much of the success of the FEC—and it has been very successful in my judgment—has come from common understanding and voluntary compliance.

5. I think the first annual report of the FEC to the Congress established the reasons for this success and the subsequent annual reports which have followed the format of the 1st report, confirm it. I would urge the appropriate committees of the Congress to hold public hearings, possible joint hearings to save time, on each annual report of the FEC just as the Joint Economic Committee holds public hearings on the President's annual economic report. The election process is sufficiently important to our society and to those abroad who look to us to perfect it to justify this effort.

6. The Clearing House function which the GAO originally set up and the FEC took over by law should be fully funded. The authorities in the 50 states who are responsible for conduction and regulating elections, I think, will testify almost unanimously to the value of this function, to exchange information about the problems and technicalities involved in conducting fair elections. I am certain that the scholars the world over have been taken aback by the thought that this important approach to rationality might be abandoned.

In conclusion, I would like to have included in my remarks for the record a law review article "Reflections on Voluntary Compliance under the Federal Election Campaign Act" appearing in the Summer 1979 Case Western Reserve Law Review which I wrote expanding upon some of the ideas I have expressed. Let me also urge students to look up and read the report of the Twentieth Century Fund task force on financing Congressional Campaigns, "Electing Congress, the Financial Dilemma" (1970), which Neil Staebler and I co-chaired. The issues it presents are still current.

PREPARED STATEMENT OF HON. NEIL STAEBLER, FORMER MEMBER, FEDERAL ELECTION COMMISSION

Anyone who has gone through a political campaign will remember in connection with every program and every policy and every action of a candidate, there is a wave of criticism coming both from within the campaign and from outside it. Politics involves change, change and criticism are inseparable.

The Federal Election Act, after 10 years, and the Federal Election Commission, in its 6 years of existence, are inevitably targets of criticism. They are also the source of a tremendous record of achievement. This Committee is, of course, interested in both.

Last April the Citizens' Research Foundation, which has spent 30 years collecting information about money in politics and examining its effect upon politics, sponsored a conference in Washington on the Federal Election Act. One of the outstanding papers at the conference was presented by Bill Loughery and dealt with the variety of criticisms levied at the Act and the Commission. I offer an extract of that paper, entitled "Reform as Bogeyman", to the Committee for its consideration. Mr. Loughery was formerly the Deputy Director of the Federal Election Commission and is now a legislative assistant to Senator Arlen Spector.

I would like to utilize my brief time before the Committee to underscore the positive accomplishments of the Act and the Commission. I would like to call attention to five great changes that have been brought about:

1. The aura of mystery and suspicion surrounding political money has been removed. Contributions and expenditures by candidates and committees are now subject to public disclosure. The amounts and the sources are visible. People agree generally that disclosure is desirable, but many forget it is not automatic just because the law requires it. Many candidates and committees tend to miss deadlines, provide incomplete information, gloss over embarrassing detail. The Commission follows up by requiring timely, accurate, and complete reports. The reports are made available to the public and the press utilizes them. In the course of following up inadequate or inaccurate reports, the Commission incurs considerable criticism. It should be noted that the Commission is in a much better position to bear up under this criticism than would an administrative official pursuing the same course of action.

2. Out-sized contributions, which were formerly commonplace in American politics, have always provoked allegations of influence and corruption. Whether warranted or not, large contributions are suspect in the public mind and receive press treatment which heightens the suspicion. The Act met this problem head-on by limiting an individual's contributions to a total of $25,000 in an election and to smaller amounts to committees and individual candidates. When there was no upper limit, cynicism about the intentions of political supporters was almost universal. With the introduction of limits, discussion of big contributors has almost disappeared; now attention is centered on the cumulative totals from industries and groups. The prevalence of modest individual contributions is one of the accomplishments of the Act. Again, it should be noted that the observation of limits is not wholly automatic; it needs to be watched and enforced, functions which are performed by the Commission.

3. With the advent of TV and professional campaign managers, campaign expenditures have escalated at a dizzying rate, with each election since 1964 increasing at least 50 percent over the corresponding election four years previous. Many commentators had connected the increasing demands of politics with the increasing evidence of irregularities in the era that culminated with Watergate. The Act has had a significant effect in moderating the rate of increase.

4. For more than 50 years, largely ineffective campaign laws have had clear prohibitions on sources of contributions, particularly from corporations, labor unions, foreigners, anonymous givers, and contributions given in the name of others. Prior to the Act and the emergence of the Commission as an enforcement agency, there was almost no attempt to check up on the sources of political contributions. It is now evident that this problem has been effectively solved. Again, it is not one that disappears automatically, but requires some enforcement, which is supplied by the Commission.

5. Perhaps the clearest contrast between pre-regulation and the current handling of money and politics is observable in Presidential elections. Thanks to the one-dollar check-off, public funds from millions of people pay the cost of general campaigns and half the cost of primary campaigns. So-called "fat cat" givers are not part of the campaigns. There is no guarantee the voters will like the successful candidates any better, but they no longer suffer from having candidates thrust on them from smoke-filled rooms. As is evident from recent Commission determinations that the Reagan, Carter, and Anderson campaigns are all required to make refunds for improper use of public campaign fund monies and a pending suit initiated by the Reagan campaign against the Commission on the ground that reputations would be damaged by public disclosure, the Commission plays a significant role in making certain that candidates stay within the limits of the Act.

There have been numerous proposals for amendments to the details of the Act, including indexing contribution limits, reducing reporting requirements, clarifying definitions, and the like. Congress has several times passed helpful amendments, notably in 1979, when many of the short-comings the Commission had observed in the Act were corrected by Congressional action. The voting system is not static and future amendments will undoubtedly be needed to keep the Act abreast of change. I would hope the changes might be made piecemeal so that they could be tested by further experience.

I would like to make one more point about the Act. For 64 years, beginning with the administration of Theodore Roosevelt in 1907, Congress tried to get a meaningful way to curb corruption. Those efforts were an almost total failure. Not until 1971 and the Supreme Court decisions of 1974–76, did a workable method of dealing with corruption emerge.

People have largely forgotten what the system was like prior to 1971. They are aware of the inconvenience arising from the present Act. The great money morass of prior years is only a faint memory. I am attaching another exhibit with the title "The Campaign Finance Revolution", which describes some of the conditions that prevailed.

The Federal Election Act should be examined and updated, but the examination should be made without partisanship and with the perspective of the great contribution it has made to cleaning up American politics and giving our political system a [illegible] degree of creditibility. It has taken us 100 years to get out of the quagmire we were in. I am sure that the public does not want to return to it.

AFTERNOON SESSION

[Whereupon, at 2:20 p.m., the committee reconvened, Hon. Charles McC. Mathias presiding.]

The **CHAIRMAN**. The committee will come to order.

We are honored this afternoon to have the Chairman of the Federal Election Commission, Mr. John McGarry, and a member of the Commission, Ms. Joan Aikens, who will testify as a panel as our first witnesses.

STATEMENT OF JOHN WARREN McGARRY, CHAIRMAN, FEDERAL ELECTION COMMISSION, WASHINGTON, D.C., ACCOMPANIED BY JOAN AIKENS, COMMISSIONER, FEDERAL ELECTION COMMISSION; B. ALLEN CLUTTER, STAFF DIRECTOR, FEDERAL ELECTION COMMISSION; AND CHARLES STEELE, GENERAL COUNSEL, FEDERAL ELECTION COMMISSION

Mr. **McGARRY**. Thank you, Mr. Chairman.

It is a privilege, Mr. Chairman, to again appear before the Senate Committee on Rules and Administration on behalf of the Federal Election Commission. I am John Warren McGarry, Chairman of the Federal Election Commission.

Accompanying me at the witness table this afternoon is Commissioner Joan Aikens, the Commission Staff Director, B. Allen Clutter; and our General Counsel, Charles Steele.

With your permission, Mr. Chairman, I would like to offer our formal statement for the record, and if I may, make a very brief personal observation.

The **CHAIRMAN**. The formal statement is included as a part of the record as if read. Please feel free, then, to make such other statement as you would like to make.

Mr. **McGARRY**. Thank you, Mr. Chairman.

My personal observation, Mr. Chairman, arises out of my background in the election field. I served as chief counsel for the Special Committee to Investigate Campaign Expenditures for the U.S. House of Representatives; and immediately prior to going on the Federal Election Commission in 1978, I served as special counsel on elections for the U.S. House of Representatives.

This opportunity enabled me to have a firsthand look at the financing of Federal political campaigns both before the establishment of the Federal Election Commission and after its creation. I can attest to you, Mr. Chairman, that prior to the creation of the Commission the election laws in this country were largely ignored. There was little or no enforcement of these laws and consequently no meaningful disclosure.

The Federal Election Commission, in my opinion, has turned that around. The Commission, in effect, dramatically changed 200 years of custom and tradition with reference to Federal election laws.

We now have a situation where it is rare that a candidate for Federal elective office does not file the reports required under the law. In accomplishing that goal and, along with it, producing for this country for the first time in its 200-year-plus history a situation where we know where the money is coming from and where the money is going in Federal political campaigns, there is no doubt that the Commission made some mistakes. We are perfectly willing to concede that mistakes were made. Any undertaking of any magnitude, whether it is business or politics, should be given an opportunity for growth, development, seasoning, and maturing.

In any event, we are now at a plateau where it is time for honing and refining the process. We have made the point and have brought the message home that if a person runs for Federal elective office, there is a Federal Election Campaign Act and there is a Federal Election Commission. This is a major, wonderful accomplishment.

We are delighted to have this opportunity to work with you in correcting and clarifying the law, particularly in areas where the law or Commission practices might impact adversely on candidates or committees.

So, my message is, "Thank you very much." We are very willing and anxious to work with you in this process, and we are happy to be with you and Senator Ford this afternoon.

The CHAIRMAN. Thank you very much, Mr. Chairman.

Ms. Aikens, do you want to say anything?

Ms. AIKENS. No, sir, not at this time; thank you. I endorse the chairman's comments.

The CHAIRMAN. Well, in your statement, Mr. Chairman, you report that in the year 1980, 13,000 people visited the FEC to examine documents. Now, of course, one of the complaints against the FEC and one of the reasons people say that it ought to be abolished is that nobody bothers to read those reports and to read the various files; that the only people who are interested are Common Cause and the press, in the event some scandal titillates their interest.

Do you have any way of knowing who these 13,000 people are; I mean what their general category of interest is? Are they press inquiries, are they political science students, are they opponents in the election? What sort of people make up this 13,000 visitors list of yours?

Mr. McGARRY. We do not formally know because we have no identification requirements. We do not ascertain directly or formally in any way who might be examining the reports and what their affiliation might be.

Our possession of that knowledge is through staff familiarity with the various individuals who examine reports. Thus, I cannot answer you other than give you an observation based merely on information that I have picked up indirectly and informally. Perhaps Commissioner Aikens, who has been at the Commission since the doors opened, may have something to add.

Certainly the press accounts for a major amount of this activity. Another very inportant group. Mr. Chairman, is the candidates and their staffs. One of the very interesting aspects of the law is its policing feature, which is very, very good. Candidate's watch one another very closely; they bird dog one another's campaign reports.

Particularly in an election year immediately after, for example, the quarterly reports or the preelection report are filed, there is a great deal of activity involving people going over those reports with a fine-tooth comb.

I would list third, the academic interest, which is fairly sizable. Beyond that, my observation is that there really is not wide, general public interest to the effect that people just come in without having any particular campaign, press or academic interest in mind, to review our reports.

Perhaps Commissioner Aikens can add something to my response.

Ms. Aikens. Mr. Chairman, I agree that the people just mentioned do come in to the greatest extent—the press, political science students' from the academic world, and, as the chairman said, candidates and committees. There is one other area, and that is the political action committees. They are often reviewing the reports of other political action committees, as well as reviewing their own reports for accuracy.

The Chairman. Well, now, it will be no surprise to either of you to know that we are being deluged with suggestions for changes in the law. I cannot predict what either this committee or the full Congress will do in that respect, but my guess is that there will be some change in the law. It may be major; it may be fairly minor.

But I am wondering what suggestions you have. If you were able to take up a legislative pen and make the changes that you feel are most necessary as a result of your experience, what would you do? I think you have just as much right to make suggestions as some of your critics.

Mr. McGarry. I would, No. 1, not tamper with the enforcement aspect of the Commission. I know many of the critics suggest that enforcement be transferred to the Justice Department.

I was involved in drafting the Federal Election Campaign Act and implementing it after its enactment. I served in the very first election cycle under this brand new election reform law as Chief Counsel for the Special Committee to Investigate Campaign Expenditures. This was set up every 2 years for a few months to monitor the House elections. We referred to the Justice Department, in the first election cycle, exactly 4,900 cases; 2,702 were candidates, both challengers and incumbents on both sides of the aisle, and the balance were political committees.

Before referring these cases to Justice, we made extreme efforts, Mr. Chairman, to get voluntary compliance. We resorted to correspondence, telegrams, and telephone calls. We even resorted to personal contact. When all efforts failed, we did exactly what the law required. We referred 4,900 cases to the Justice Department.

Senator Ford. 4,900 cases?

Mr. McGarry. 4,900 right on the button; 2,702 were candidates and the balance were political committees. The Justice Department did nothing with those cases. Now, in fairness to the Justice Department, we all know that they are mainly interested in the pursuit of major crimes such as bank robberies, murder, and drug smuggling. They had neither the inclination, the machinery nor the resources to get involved in policing. What might be termed minor civil violations of reporting, record-keeping, disclosure provisions of the election law.

Frankly, Mr. Chairman, it is my personal opinion that if nothing else happened or nothing else intervened, the situation would not have changed. Tragically, the brand new election reform law would have had us reverting back to what we had for half a hundred years before under the old Corrupt Practices Act, where the election laws were largely ignored and there was little or no enforcement and little or no disclosure.

Of course, we all know that something did happen, and that was Watergate. When that burst on the American political scene, on both sides of the aisle, public outrage, and public opinion demanded an independent commission to enforce the election laws. It was under those circumstances that the Federal Election Commission was born, mainly to enforce the law.

As a result of that personal experience, I am very much convinced that it would be a big mistake to transfer enforcement back to the Justice Department. I am further advised that the Justice Department has testified before the Congress that an independent commission should have the responsibility. I think that is right.

On the more positive side, I truly believe that we are suffering very badly as a result of budget cuts. If we receive even more cuts, we will be unable to fulfill our statutorily mandated duties.

This would be most unfortunate. It is really an indirect way of eliminating the Federal Election Commission, consigning it to what might be termed a slow death. We would be put in a position where we could not possibly do a good job, and would be placed in disrepute. That would be very tragic.

The money factor is extremely important on the disclosure side, as well as enforcement area. Beyond enforcement and disclosure, there is a vital need that is still very much there. The educational process must be ongoing.

When we opened our doors, the three immediate problems we had were making people aware that there was a law, educating them as to the contents and requirements of the law, and persuading them to comply with the law. That need has not disappeared. If the educational function suffers further as a result of budget cuts, the law and the Commission will fall into a pitiful state. We will be slowly going back to where we were under the old Corrupt Practices Act.

As far as positive legislative recommendations, we have made 30 of them to the Congress which are contained in our annual report. They cover many subjects, including correcting a very bad situation with reference to draft committees. Many of the Commission's recommendations have been included in your bill, Mr. Chairman. We are very grateful for that, and we think your bill is basically excellent.

We have made a whole host of suggestions, which, as I said in my preliminary personal observation, would be very, very helpful in clarifying and correcting the law. The Commission does not want to impact adversely on candidates and committees.

The CHAIRMAN. I think we might incorporate your 30 recommendations into this record at this point.

Mr. MCGARRY. Thank you.

The CHAIRMAN. Without objection, I will direct the staff to put a copy of those recommendations in with your statement, so that we have it all together in one place and so that other people who are reading it can see it.

[The material referred to follows:]

PREPARED STATEMENT OF JOHN WARREN MCGARRY, CHAIRMAN, FEDERAL ELECTION COMMISSION

It is a privilege, Mr. Chairman, to again appear before the Senate Committee on Rules and Administration on behalf of the Federal Election Commission. I am John Warren McGarry, Chairman of the Commission. The Commission's Staff Director, B. Allen Clutter, and General Counsel, Charles Steele, are also present to assist us in responding to any questions you may have.

At the Committee hearing on April 23, 1981, you commented on the need to take a long, hard look at both the Federal Election Commission and the way in which the Federal Election Campaign Act has affected the electoral process. We concur in the need for an objective appraisal of the impact of the Act and an evaluation of the Commission's operations.

We have been invited today to comment on a number of legislative proposals which have been proposed in the Senate. These bills would revise current law in various ways. The Commission recognizes the need to consider changes in the law. Each year, the Commission has submitted legislative recommendations to the Congress for improvements to the Federal Election Campaign Act and the public financing provisions of Title 26 of the United States Code. We are always exploring ways in which voluntary compliance can be enhanced, the need for enforcement reduced, and our administrative performance improved. We hope that as a result of these efforts, campaign finance disclosure will work more effectively. Thus, the Commission particularly welcomes this opportunity to work with you.

In my statement today, I would like to make some remarks concerning the role and performance of the Commission, then discuss aspects of the legislation under consideration by the Committee.

The annual appropriation of the Federal Election Commission is relatively small in terms of dollars when compared to other aspects of the Federal Budget. Based on Congressional action to date, we can expect Fiscal Year 1982 funding of from $9.3 million to $9.7 million. As the Commission indicated in testimony earlier this year, it will be difficult to perform all of our responsibilities adequately at this reduced level.

Though the Federal Election Commission has been in existence only slightly more than six years, campaign finance reform has been debated over most of this century. More than a half dozen pieces of legislation were enacted prior to establishment of the Commission, each requiring some disclosure and placing some restrictions on the size and source of political contributions. These laws were largely ignored, however, because no meaningful enforcement mechanism was provided. It was not until creation of the Federal Election Commission that real enforcement began.

Establishment of the Commission was the subject of heated debate in 1974. The need for an independent body to monitor election law continues to be questioned. We welcome the attention now being given by this Committee to the issues of whether the FEC should continue and, if so, whether it should remain in its present form.

The key to answering this question is to look back to the reasons put forth for establishing the Commission in the first place. Clearly, a major concern leading to creation of the FEC was the need to ensure independent, impartial enforcement of the laws relating to campaign finance activity and public disclosure. Another objective was achievement of more efficient administration than had previously occurred when four separate entities—the Secretary of the Senate, the Clerk of the House, the General Accounting Office, and the Justice Department—had concurrent responsibilities.

The question which obviously occurs at this time is: Has the FEC lived up to original expectations? We believe, Mr. Chairman, that the answer is clearly in the affirmative.

Today, we have an effective disclosure system. For the first time in the history of our country, the public fully knows where campaign money is coming from and where it is going.

Any individual can come into the FEC and examine reports of all candidates and political committees. In the 1980 election year, nearly 13,000 individuals came to the Commission to review over 3 million pages of campaign finance reports filed since 1975. As required by statute, reports are placed on the public record within 48 hours of receipt.

At the FEC, microfilm copies of all reports are supplemented by computer-based indexes and a computer terminal. Information can be quickly located and assessed in a number of formats. In response to phone requests from all over the country, the Commission will mail copies of reports, and even perform research tasks for callers.

For those whose interest focuses on the larger patterns of campaign financing, the Commission issues detailed computer-based statistical reports.

Since its establishment, the Commission has encouraged and promoted voluntary compliance with the requirements of the law. High priority is placed on activities which help candidates and committees understand a complex law and their responsibilities under it. Copies of the law, Commission regulations, a monthly newsletter, and explanatory guides directed at different groups are provided without charge.

To buttress these technical aides, the Commission maintains a highly trained staff of specialists to answer questions about the law. Our toll-free "800" line was one of the first installed by a government agency. In 1980, the Commission's Public Communications Office answered 54,000 calls and filled 14,500 requests for materials. Few government agencies offer the fast yet thorough services which the Commission provides daily.

The disclosure and other campaign finance requirements of the law would be of little value if not meaningfully enforced. Absence of effective enforcement was one reason why prior laws were largely ignored. In connection with the 1972 elections, the Clerk of the House and Secretary of the Senate referred several thousand apparent violations to the Department of Justice. No action was taken. Only a few of over 100 allegations of serious violations of the law referred to the Justice Department by the Comptroller General over a three-year period beginning in 1972 were ever prosecuted. This prompted the General Accounting Office, in a February 1975 report to note that "Action by the Department of Justice . . . has generally been too belated and too limited to be of significant value in administering the law."

The record of the Federal Election Commission has been dramatically different. Compliance has been monitored closely. The Commission has made clear from the beginning that it expected timely and accurate reports. When committees have not complied with the law, the Commission has immediately followed up with inquiries and, if needed, assistance. The Federal Election Campaign Act mandates that specific steps be followed in dealing with complaints and processing enforcement actions. As a last resort, litigation may be initiated.

Many of the criticisms of Commission operations relate to enforcement. I believe that the other Commissioners would agree with me in stating that some mistakes may have been made; but the complexity of a new law was certainly a factor that we had to deal with in our early years. Furthermore, application of the letter of the law to the art of politics has not been easy. I believe than an objective examination of the record will show that the Commission has turned the corner in its implementation of the law. Yet, we are still being criticized on account of incidents which occurred long ago.

Many of the criticisms of the Commission's enforcement actions have actually reflected disagreement with the law itself. Resentment against the enforcement of particular provisions has been converted into hostility toward the Commission. It should not be lost that, while we may share the view of the critics and make recommendations for legislative change, until such changes are made, we are bound to enforce the law as it is written. The best example is the state-by-state expenditure limits in the presidential election. This is burdensome to the Commission and the campaigns which must comply.

The Federal Election Commission's monitoring procedures, technical assistance, and enforcement actions have all worked to ensure that candidates and committees file timely and complete reports and comply with statutory campaign finance requirements. The details of political campaigns have been disclosed to the public to a greater extent than ever before.

After the *Buckley* vs. *Valeo* Supreme Court decision in 1976, which held aspects of the Federal Election Campaign Act of 1971 unconstitutional, President Gerald Ford sent a message to Congress requesting swift action in reconstituting the Commission. The President's remarks in the February 16, 1976, message bear on some of the legislative proposals now pending before this Committee, and merit repetition in part:

"The American people can and should expect that our elections . . . will be free of abuse. And they know that the Federal Election Commission is the single most effective unit for meeting that challenge.

"If it becomes an empty shell . . . public confidence in our political process will be further eroded and the door will be opened to possible abuses in the coming elections."

PROPOSALS TO AMEND CURRENT LAW

In accordance with Section 311(A)(9) of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 438(a)(9)), the Commission submits to Congress and the President each year, a report detailing its activities. The Act requires that the report include "recommendations for any legislative or other action the Commission considers appropriate."

Each year since 1975, the Commission has included in its Annual Report a number of recommendations for legislative action which reflect our experience in administering the Federal Election Campaign Act and the public financing provisions of Title 26 of the U.S. Code. These suggestions are intended to make the law more workable and more acceptable to political committees and the public. Many of the improvements recommended by the Commission have been incorporated into the law.

The Commission's most recent Annual Report includes approximately 30 legislative recommendations. I am pleased to note, Mr. Chairman, that several of the suggestions offered by the Commission in this or prior years' Annual Reports have been incorporated into some of the bills now being considered by this Committee. It is appropriate at this point to review the Commission's legislative recommendations and their relationships to the pending proposals. There are other aspects of these bills which do not relate to areas in which the Commission has made legislative recommendations, regarding which we take no position.

The Commission's most recent legislative proposals are included in the Annual Report for fiscal year 1980. There are four recommendations relating to reporting. Each of these has been included in one or more of the bills which have been introduced or shared with the Commission in draft form.

In the past, there have been instances when the Commission may have wished to suspend the reporting requirements of the law in cases where reports or requirements were excessive or unnecessary. To reduce needlessly burdensome disclosure requirements, the Commission should have authority to grant general waivers or exemptions from the reporting, recordkeeping or organizational requirements of the Act. Such waiver authority would be provided by both the Chairman's bill and the bill introduced by Senator Specter.

To minimize reporting burdens, the Commission has suggested that Congress may wish to permit authorized presidential committees filing reports on a monthly basis to revert to quarterly filing, where the candidate is no longer seeking nomination or election to the Office of President and has so notified the Commission in writing. Both the Chairman's bill and Senator Specter's bill incorporate this recommendation.

Under current law, candidate committees must provide written notification within 48 hours of receipt of any contribution of $1,000 or more received after the 20th day before an election. The Commission has suggested that, to simplify procedures and reduce reporting, only one notification be required for such contributions received between the 20th and 10th days before the election. The 48 hour requirement would still apply to contributions received after that. Such a provision is included in the Chairman's bill. Senator Specter's bill would amend the law to require that notification be made within 48 hours only for contributions exceeding $1,000.

The requirements and limitations in current law relating to contributions and expenditures received attention in one way or another in all of the bills now under consideration by the Committee. Both the Chairman's bill and the bill introduced by Senator Spector agree with the Commission in the following areas:

Contribution limitations should be changed from a "per-election" basis to an "annual" or "election-cycle" basis in order to simplify application of contribution limitations and reduce bookkeeping burdens;

The current requirement that contributions earmarked for a candidate through an intermediary are to be considered contributions by the original donor should be extended so that it also applies to contributions earmarked to other political committees, making certain that source of all donations are reported clearly; and

Corporate approval for trade association solicitation of its members should be effective until revoked, instead of the burdensome process of requiring separate and specific approval of each member corporation being required each year.

For several years, the Commission has expressed concern because committees established to draft a candidate were not clearly covered under the definition of "political committee" included in the Act. In May of this year, the United States Court of Appeals for the District of Columbia Circuit found that committees engaging in activities designed to influence an individual to seek the nomination for election to federal office or supporting the nomination of such an individual were not regulated by the FECA prior to the 1979 amendments to the Act. Even after the 1979 amendments, such committees were only required to comply with the Act's reporting requirements. In addition, the Court failed to make any distinction whatsoever between such activities conducted by so-called "draft" committees and similar efforts by separate segregated funds. The Supreme Court has decided not to review this decision. On August 28, 1981, the Commission sent a letter to Congress suggesting that legislative action be taken to correct this situation. Senator Specter's bill would amend current law in several instances to assure that draft committees are covered.

A single place for filing all reports (point of entry) should reduce the cost of maintaining three different offices for a similar purpose and would eliminate confusion regarding where candidates and committees should file their reports or go to resolve any questions. The Commission has recommended that it be the sole place of filing for all disclosure documents filed by federal committees. This recommendation is included in Senator Specter's bill.

The Chairman's bill carries forward two Commission recommendations from prior years. Those proposals relate to increasing from $15,000 to $20,000 the limit on the amount a multi-candidate committee can contribute to a national political party committee, and modifying those requirements for multi-candidate committee status that pertain to minimal contributions to candidates.

In previous years the Commission has suggested that Congress may wish to consider reexamination of the dollar amount of contribution limits specified by the Act in light of the time which has passed since first enacted. The Commission makes no specific recommendation at this time, but notes that both the Chairman's bill and Senator Specter's bill would effectively raise the specified limits. Senator Jepsen's proposal would remove most limitations entirely.

There are four other recommendations in the current Annual Report which the Commission wishes to call to the Committee's attention. These are as follows:

Congress may wish to circumscribe the use of volunteer professional services when they are donated solely for fundraising rather than for actual campaigning;

Congress may wish to consider exempting State public funding payments to State party committees from the definitions of "contribution" and "expenditure;"

An age should be established below which contributions by children would be considered to have been made by the parent's contribution limitations; and

Application of the Act's prohibition on contributions by foreign nationals should be clarified with respect to U.S. corporations owned by foreign nationals, subsidiaries of foreign corporations and trade associations with members who are foreign nationals or foreign corporations should be clarified.

With respect to the duties, powers and authorities of the Commission, four recommendations are included in the Commission's 1980 Annual Report. Three of these have been incorporated into both the Chairman's bill and Senator Specter's bill. They are as follows:

Charges received by the FEC for publications, photocopies and other items should go into a revolving fund to reimburse the Commission without reduction of the Commission's budget, rather that being transferred to the U.S. Treasury;

The public comment period for advisory opinion requests received within 60 days of an election should be reduced from 10 days to 5 days; and

The judicial review provisions of Titles 2 and 26 of the U.S. Code should be brought into conformity.

The Commission has recommended that the period for congressional review of Commission regulations be reduced from 30 days to 15. Senator Specter's bill includes this provision. Both Senator Specter's bill and the Chairman's bill would conform the different definitions of "legislative day" which are now provided under Title 2 and Title 26.

In the area of registration, the Commission has suggested that various changes be made to the law to clarify the relationship between political committees and candidates, organizations, or parties. The Chairman's bill would accomplish this.

The Commission has suggested that it be exempted from the Regulatory Flexibility Act (Public Law 96-354) and the accounting requirements of the Privacy Act (Public Law 93-579). Both the Chairman's bill and Senator Specter's bill would accomplish this. In addition, both bills would make a technical correction to 26 U.S.C. 527(f)(3) suggested by the Commission.

As you know, Mr. Chairman, the Commission has provided information to, and has continued to work with, the Campaign Study Group of the Institute of Politics of Harvard University in connection with a study of presidential campaign finance being undertaken by the Committee. I am certain that the results of this study will assist the Committee in determining changes which may be desirable to the presidential public financing provisions of current law. The Commission has a number of suggestions with regard to presidential public financing which I would like to call to the Committee's attention at this time.

Senator Specter's bill has incorporated the following Commission recommendations relating to presidential elections:

The state-by-state spending limitations which apply to the primary election cycle should be removed, with only an overall expenditure limitation remaining;

Differing definitions of "qualified campaign expense" in chapters 95 and 96 of Title 26 should be made consistent; and

Repayments of public funds, if necessary, should be credited to the Presidential Election Campaign Fund, rather than the U.S. Treasury general account.

Senator Specter's bill also includes the following three proposals suggested by the Commission in prior years:

The Presidential Election Campaign Fund Act should be amended to provide a block grant for legal and accounting services for each candidate and committee receiving public funds, and the exemption of these services from contribution and expenditure limitations should be removed;

The 20 percent fundraising exemption should be eliminated and the expenditure limitation raised accordingly; and

Provision should be made in the law to ensure that the presidential election campaign fund will not be depleted.

Other current Commission recommendations relating to presidential campaigns are as follows:

The fact that a candidate who accepts public funding may not make expenditures from public funds or private contributions for other than qualified campaign expenses should be clarified;

The possibility of double funding for new party candidates should be eliminated;

The status of independent candidates not from a new party should be clarified;

The law should make it clear that the Commission should seek repayments of amounts determined to be repayable in the context of enforcement proceedings and audits under sections other than 26 U.S.C. 9038; and

The Commission should be given 20 days for processing candidate's threshold submissions for matching funds.

Thank you, Mr. Chairman, for consideration of all of our recommendations and for inviting us to be present today. We would now be pleased to respond to any questions that the Committee may have.

FEDERAL ELECTION COMMISSION, 1980 ANNUAL REPORT—CHAPTER 1, LEGISLATIVE RECOMMENDATIONS

The Federal Election Campaign Act requires the Commission to include in its annual report ". . . recommendations for any legislative or other action the Commission considers appropriate. . . ." Section 438(a)(9). The following recommendations reflect the Commission's experience in administering the 1979 Amendments to the election law and in administering the public financing program in two Presidential elections. The Commission believes these suggestions will make the election law more workable and more acceptable by political committees and the public. Continuing to evaluate its administration of the election law, the Commission may offer additional recommendations later this year.

REPORTING

General waiver authority (2 U.S.C. §436)

In the past, there have been instances when the Commission may have wished to suspend the reporting requirements of the law in cases where reports or requirements were excessive or unnecessary. In the 1979 Amendments to the Act, Congress repealed 2 U.S.C. §436 which provided the Commission with a limited waiver authority. That provision was unclear and of limited use; nonetheless, to reduce needlessly burdensome disclosure requirements, the Commission should have authority to grant general waivers or exemptions from the extensive reporting, recordkeeping and organizational requirements of the Act. Each proposal for a general waiver would, of course, be submitted to Congress in the form of a regulation subject to legislative review. If Congress does not grant the Commission general waiver authority over the reporting requirements of the law, it should consider changing specific provisions that have proven burdensome. The Commission suggests the following changes: (1) a candidate's principal campaign committee existing solely to extinguish debts from a previous campaign should be permitted to file semiannual reports even in an election year, provided that, if the candidate is currently seeking election, he or she has authorized a new principal campaign committee, which is reporting for that election and (2) the principal campaign committee of a candidate for the office of President should not be required to file pre- and post-general election reports if the candidate is no longer seeking election.

Point of entry (2 U.S.C. §432(g))

The Commission recommends that it be the sole point of entry for all disclosure documents filed by Federal committees. A single point of entry would eliminate any confusion about where candidates and committees are to file their reports. It would assist committee treasurers by having one office with which to file, correspond and ask questions. At present, conflicts may arise when more than one office sends out materials, makes requests for additional information and answers questions relating to the interpretation of the law. A single point of entry should also reduce the cost to the Federal government of maintaining three different offices, especially in the area of personnel, equipment and data processing.

The Commission has authority to prepare and publish lists of nonfilers. It is extremely difficult to ascertain who has and who has not filed when reports may have been filed at or are in transit between two different offices. Separate points of entry also make it difficult for the Commission to track responses to compliance notices. Many responses and/or amendments may not be received by the Commission in a timely manner, even though they were sent on time by the candidate or committee. The delay in transmittal between two offices sometimes leads the Commission to believe that candidates and committees are not in compliance. A single point of entry would eliminate this confusion. If the Commission received all documents, it would transmit on a daily basis file copies to the Secretary of the Senate and the Clerk of the House, as appropriate. The Commission notes that the report of the Institute of Politics of the John F. Kennedy School of Government at Harvard University, "An Analysis of the Impact of the Federal Election Campaign Act," 1972–78, prepared for the House Administration Committee, recommends that all reports be filed directly with the Commission (Committee Print, 96th Cong., 1st Sess., at 122 (1979)).

Authorized Presidential committees (2 U.S.C. §434(a)(3))

To minimize reporting burdens, Congress may wish to permit authorized Presidential committees filing reports on a monthly basis to revert to quarterly filing, where the candidate is no longer seeking nomination or election to the office of President and has so notified the Commission in writing. In addition, Congress may wish to allow such committees to file semiannual reports in a nonelection year.

48-Hour reports (2 U.S.C. §434(a)(6))

Require recipient committee to report in one notification contributions of $1,000 or more received after the close of books on the 20th day before the election through the 10th day before the election. Contributions of $1,000 or more received after the 10th day would be reported within 48 hours.

CONTRIBUTION AND EXPENDITURE LIMITATIONS

Election period limitations (2 U.S.C. §441a)

The contribution limitations are structured on a "per-election" basis, thus necessitating dual bookkeeping or the adoption of some other method to distinguish between primary and general election contributions. The Act could be simplified by changing the contribution limitations from a "per-election" basis to an "annual" or "election-cycle" basis. If an annual limitation is chosen, contributions made to a candidate in a year other than the calendar year in which the election is held should be considered to have been made during the election year. Thus, multicandidate committees could give up to $10,000 and all other persons could give up to $2,000 to an authorized committee at any point during the election cycle.

Contributions by minors (2 U.S.C. §441a)

The Act does not stipulate at what age a minor child may make contributions. Presently, the Commission is forced to rely on subjective criteria such as whether "the decision to contribute is made knowingly or voluntarily by the minor child." Congress should establish an age below which contributions by children would be considered to have been made by the parent and subject to the parent's $1,000 contribution limitation.

Contributions to draft committees (2 U.S.C. §441a)

Consideration should be given to the contribution limitations that apply to draft committees. Since the $1,000 limitation on contributions by persons other than multicandidate committees applies only to candidates, a person may give up to $5,000 per year—the limit applicable to "other political committees"—to a draft committee. Precisely this situation was presented in Advisory Opinion 1979-40. Congress may wish to amend the statute to make the $1,000 limitation, rather than the $5,000 limitation, applicable to contributions to political committees whose purpose is to influence a clearly identified individual to become a candidate.

Although the limitation on contributions by multicandidate committees to candidates or to draft committees is $5,000, multicandidate committees, as well as other persons, may make two contributions toward the nomination of an individual—one contribution to a draft movement and, if the individual later becomes a candidate, another contribution to the candidate's authorized committee. Accordingly, Congress may wish to consider amending the Act to provide that a person who has contributed to a draft committee with the knowledge that his or her contribution will be expended to draft a clearly identified individual will, for the purposes of the contribution limitations, be considered to have made a contribution to a "candidate." If that individual should become a candidate, the contributors to the draft movement would be eligible to give to the candidate's authorized committees only to the extent their earlier aggregate contributions did not exceed the "candidate" limits.

Earmarked contributions (2 U.S.C. § 441a(a)(8))

Section 441a(a)(8) states that contributions made on behalf of a candidate through an intermediary or conduit shall be considered contributions to the candidate by the original donor. The statute should be amended to make this provision applicable to contributions earmarked to political committees.

Foreign nationals (2 U.S.C. § 441e)

Section 441e should be revised to state whether this section reaches U.S. corporations owned by foreign nationals, subsidiaries of foreign corporations and trade associations with members who are foreign nationals or foreign corporations.

Voluntary services (2 U.S.C. §431(8)(B))

The Act places no limit on the services that a professional may donate to a candidate. For example, a professional entertainer may participate in a concert for the benefit of a candidate without the proceeds of that concert counting toward the entertainer's contribution limitations. Congress may wish to circumscribe the use of volunteer professional services when they are donated solely for fundraising rather than for actual campaigning. A similar question is raised when an artist donates artwork to a campaign to be used for fundraising or to be disposed of as an asset of the campaign.

Trade association solicitation approval (2 U.S.C. § 441b(b)(4)(D))

Trade association political action committees must obtain the separate and specific approval of each member corporation to solicit their executive and administrative personnel. Some trade associations have thousands of members, and it is a considerable administrative burden to obtain approval to solicit every year. The one-year limitation should be removed, and the trade association should be allowed to solicit until the corporation revokes its approval.

PRESIDENTIAL ELECTIONS

Repayments to the fund (26 U.S.C. § 9007(b))

Repayments under the Presidential Primary Matching Payment Account Act (Chapter 96, 26 U.S.C.) are credited to the Presidential Election Campaign Fund, while repayments under the Presidential Election Campaign Fund Act (Chapter 95, 26 U.S.C.) are credited to the general fund of the Treasury. All repayments should be credited to the Presidential Election Campaign Fund so that dollars checked off by taxpayers for the Fund do not indirectly end up in the general fund.

Use of contributions matched by Federal funds (26 U.S.C. § 9038(b)(2)(B))

Section 9038(b)(2)(B) requires the repayment of any matching funds used for any purpose other than ". . . to restore funds . . . which were used, to defray qualified campaign expenses." This provision requires the repayment of an amount equal to any expenditure from matching funds or privat contributions made for nonqualified campaign expenses. (See 11 CFR 9038.2(a)(2).) The Congress may wish to more clearly state in § 9038(b)(2)(B) that a candidate who accepts public funding may not make expenditures from public funds or private contributions for other than qualified campaign expenses.

Qualified campaign expenses (26 U.S.C. §§ 9002(11) and 9032(9))

Chapters 95 and 96 of Title 26 of the Internal Revenue Code contain different definitions of "qualified campaign expense." Chapter 95 defines a "qualified campaign expense" to mean an expense incurred to further the election of a Presidential candidate. Chapter 96 defines "qualified campaign expense" to mean an expense incurred in connection with a campaign for nomination to the office of President. The Commission recommends that the definition contained in Chapter 96 be incorporated into Chapter 95.

Also, the second sentence of the paragraph following 26 U.S.C. § 9002(11)(c) should be clarified to indicate whether it incorporates the "coattails provision" (2 U.S.C. § 431(8)(B)(xi)) or the limitations on "support" of other candidates by a principal campaign committee (2 U.S.C. §432e)(3)(B)).

Public funding for independent candidates (26 U.S.C. §§ 9002(2), 9003 and 9008)

Congress should consider clarifying whether or not an independent candidate, who is not a new party candidate, is eligible for post-election public funding in the general election.

State spending limits (2 U.S.C. § 441a(b)(1)(A))

The Commission has observed during the 1976 and 1980 primary election cycles that candidates and their respective principal campaign committees have expended heavy resources in an attempt to observe the State-by-State spending limitations contained in 2 U.S.C. § 441a(b)(1)(A). The Commission has also spent a considerable amount of its audit resources in verifying compliance with these State limitations. In the process, it has uncovered a number of difficulties. First, it has been difficult to differentiate between expenses that were "national" in impact and expenses that were targeted to a specific State(s). For example, how does one categorize nationwide media broadcasts, nationwide mailings and the distribution of campaign literature which addresses issues of national interest rather than issues pertaining to a specific State(s).

Additionally, it has been difficult to determine how to reasonably attribute travel costs to a specific State(s) when a candidate and support staff travel throughout the United States. Finally, it has been difficult to determine how to reasonably attribute to a specific State(s) the costs of producing and airing television spots, especially in light of cable television and its penetration into multistate markets.

The areas mentioned above are but a few of the practical difficulties encountered when one attempts to attribute the costs associated with a nationwide Presidential campaign to specific States. The Commission has also found that, with a few exceptions (Iowa, New Hampshire and Maine), candidate expenditures have not approached the State limits. The Congress may, therefore, wish to remove the State-by-State limitations and retain the overall expenditure limitation, with an amendment to incorporate the present 20 percent fundraising exemption into the overall limit. (See the 1979 *Annual Report*, page 40, for a detailed discussion of a fundraising exemption recommendation.)

Public funding of Federal candidates by States (2 U.S.C. §431(8) and (9))

At least one State has established a public funding scheme in which State tax money is distributed to State party committees, which in turn have discretion over the amount each candidate for office in that party should receive. Congress may wish to consider excepting these payments from the definitions of "contribution" and "expenditure" so that the party is not a contributor and so that these amounts do not apply to § 441a(d) limits.

Entitlement of eligible candidates to payments (26 U.S.C. § 9004(a)(2))

Under § 9004(a)(2), a minor or new party Presidential candidate who received more than 5 percent of the popular vote would be eligible for pre-election funding in the next Presidential general election. If the candidate did not run again, the party's new nominee would be eligible for such funding. If the candidate ran in the next election as an independent or the candidate and his or her old party would be eligible for pr-election funding in the next election. Congress may want to eliminate the opportunity for such double funding.

Recovery of public funds (26 U.S.C. §§ 9010(b) and 9040(b))

Sections 9010(b) and 9040(b) should be amended to clarify that the Commission may seek repayments of amounts determined to be repayable in the context of enforcement proceedings and audits under sections other than 9038. As currently drafted, those sections are confusing since they do not reference the Title 2 enforcement procedures, which may uncover payments improperly made, or the other provisions permitting Commission audits.

Deadline for consideration of initial matching fund certification (26 U.S.C. § 9036)

In order to allow the Commission sufficient time to adequately verify the initial threshold submission to establish eligibility for matching funds, the 10-day period for processing should be increased to 20 days.

COMMISSION DUTIES, POWERS AND AUTHORITIES

Number of legislative days for regulation review (2 U.S.C. § 438(d))

The 1979 Amendments contained a provision reducing the number of legislative days for Congressional review of Commission regulations from 30 days to 15. This reduction was only applicable, however, to the regulations written to implement the 1979 Amendments. Congress should shorten the period for review of all Commission regulations to 15 legislative days.

In addition, two different standards currently apply to Congressional review of Commission regulations because two different definitions of "legislative day" are provided under Title 2 and Title 26. In Title 2, legislative days are counted separately in each House of Congress. In Title 26, legislative days are only counted when both Houses are in session. The Title 26 provision should be revised to match the Title 2 provision, thus avoiding unnecessary delay in regulation review.

Judicial review (2 U.S.C. § 437h; 26 U.S.C. §§ 9010, 9011, 9040 and 9041)

The Act contains different judicial review provisions which Congress should consider conforming to each other. As noted by the court of appeals for the District of Columbia Circuit, no apparent reason exists for the different review provisions in Title 2 and in Chapters 95 and 96 of Title 26. This anomaly creates difficulties for the courts because cases brought under one Act often also involve questions relating to the other Acts. See *Republican National Committee* v. *Federal Election Commission* (case brought under both 2 U.S.C. § 437h and 26 U.S.C. § 9011(b)). The requirement of § 437h that cases be heard by the courts of appeals sitting *en banc* has been noted by the courts of appeals for the District of Columbia Circuit, the Fifth Circuit and the Ninth Circuit as presenting great difficulties. The *en banc* requirement should be repealed and Congress should establish a single judicial review provision applicable to all three Acts.

Revolving fund (2 U.S.C. § 438)

Although the FEC charges fees for publications and photocopies of documents provided to the public upon request and pursuant to the Freedom of Information Act, none of the monies collected reimburse the FEC for resources used. Instead, the money is transferred to the U.S. Treasury. For the fiscal year ended September 30, 1980, the FEC collected and transferred $37,342.73 to the Treasury (the miscellaneous receipts account). This amount represented fees derived from selling Commission publications and photocopies of documents to the public. In order for the FEC to receive reimbursements for the documents it provides, a "revolving fund account" must be authorized by law. According to the *Treasury Fiscal Requirements Manual,* Congress would have to authorize a revloving fund account to finance a continuing cycle of operations in which expenditures would generate receipts and the receipts would be available for new expenditures. In addition, costs awarded to the Commission in litigation (e.g., printing, but not civil penalties), should be payable to the revolving fund.

Comment period for advisory opinions (2 U.S.C. § 437f(d)

The 1979 Amendments provide that advisory opinion requests submitted by candidates or their committees within 60 days of an election must be answered within 20 days. However, the Act sets a 10-day public comment period for all requests. This comment period should be shortened to five days for requests under the 20-day requirement to give the Commission sufficient time to fully consider and incorporate comments received.

REGISTRATION

Names of committees (2 U.S.C. § 432(e))

Under Section 432(e)(4), authorized committees must include the candidate's name in the name of the committee. Separate segregated funds must include the name of their connected organization in their name under Section 432(e)(5). The concept behind these requirements is to enable the public to know whom these committees represent. However, many political committees connected with the organization are not covered by these provisions, even though the public has the same need to know.

"Draft" committees, so called "dump" committees and "delegate" committees should also be required to include the name of the person or candidate they support or oppose in their name, with an appropriate reference to the nature of the committee, e.g., "draft," "delegate" or "dump." In addition, other political committees which have connected organizations or sponsors but which are not segregated funds should be required to include the name of their parent organization in the committee's name.

No committee should be able to use the name of a political party in its name unless it is an official party committee. Similarly, no committee should be able to include the name of a Federal office in its name unless it is an authorized committee.

OTHER STATUTES

Regulatory Flexibility Act (Pub. L. 96–354)

Congress should exempt the Federal Election Commission from the requirements of the Regulatory Flexibility Act. None of the Commission's regulations could have a significant impact on a substantial number of small businesses due to the nature of the Commission's jurisdiction, which mainly extends to political committees. The Commission is therefore required to comply with the Regulatory Flexibility Act in a negative fashion, spending time and resources repeatedly asserting that no effect on small businesses will result from Commission rulemaking. A far simpler solution would be to exempt the Commission from these requirements.

Privacy Act of 1974 (Pub. L. 93–579)

The Commission should be exempted from its duty to comply with the accounting requirements of 5 U.S.C. § 52a(c) to the extent that the section requires an accounting of all disclosures maintained on the public record. The Commission has a reading room to which members of the general public may come and inspect microfilm copies of public reports. Placing such documents on the public record is a routine use of such materials. An exemption from the accounting requirements would not contravene the principles of the Privacy Act since the individuals involved are those running for office or contributing to candidates for Federal office. Congress has determined that in this situation the public's need to know the financial activities of political committees outweighs any privacy interest such individuals may have in this area.

TECHNICAL AMENDMENTS

26 U.S.C. § 527(f)(3)

The cross-reference in 26 U.S.C. § 527(f)(3) should be changed from "section 610 of Title 18" to "section 441b of Title 2."

Gender specific language

Gender specific language should be eliminated from the statute wherever it appears. Examples include §§ 439a, 441(a)(7), 441(b)(3)(C), 441f 441h, 442 9002(11)(a), 9012(b)(2), 9035, etc.

Definitions (2 U.S.C. § 431)

The 1979 Amendments changed the numeration of the definition subsections in 2 U.S.C. § 431 from letters to numbers. As a result of this change, citations to this section have numbers following numbers, e.g., 2 U.S.C. § 431(8). Such citations differ from traditional citation form and therefore appear incorrect and can be awkward to cite orally. The numeration should be changed to lower case letters.

The **CHAIRMAN**. Just one more question before Senator Ford takes the floor. There are all sorts of signs beside the falling leaves that we are really into another campaign season. I do not have to detail all of those visible signs; I think it is clear that the 1982 congressional elections have begun.

We do not, however, I believe, have the final reports from the FEC on spending and financial activity in 1980. Now, money is being raised and money is being spent right now for 1982, and if that report is not available in the very near future, I am not sure that it will have any utility other than for scholarly interest. It will not be available for consideration by this committee, for example, as we look at a reauthorization bill.

I am not chiding you over that; I am trying to probe as to what we can do to make it easier so that we could get that information sooner.

Are you forced to deal with trivial information and unnecessary information in a way that delays and postpones publication of this particular area of activity?

Mr. McGarry. Yes, but that is in fairness only a small part of it, Mr. Chairman. The Reports on Financial Activity, or RFA's, are not a statutorily mandated duty of the Commission. However, a majority of the Commissioners feel that compiling this data is a very worthy project.

We try as much as we can, within the limits of our budget, to give it a priority, because it is very important. I personally think it should be a statutorily mandated duty, with adequate funds to do the job properly.

There are problems besides the budget Mr. Chairman, and some very important factors which people lose sight of with respect to putting together the congressional RFA. First, a lot of people, even practitioners in the field, do not realize that we at the Commission do not even get to begin working with the raw data until early February. Because the year-end report is not filed until January 31, we do not get a crack at it until 90 days after the election.

Second, a great mass of material and reports comes in at that time. It may be, under the most ideal circumstances, 45 to 60 days before requests for additional information can be sent out. These are very important. With reference to the 1978 election, 38 percent of the filers submitted either incomplete, erroneous, or basically what might be termed inadequate reports. This requires going back to them with requests for additional information.

I am saddened to say that there is not the highest degree of cooperation in this area. We try not to be too burdensome or onerous. In any event, under those most ideal circumstances, we must wait almost 6 months after the election for corrections to come in. A lot of people lose sight of that.

Under the most ideal circumstances, with everything working and everyone cooperating, it would not be possible to get the RFA out, in my own personal opinion, until perhaps July or August.

The Chairman. Of the succeeding year?

Mr. McGarry. Yes.

The Chairman. In other words, this past July and August?

Mr. McGarry. That is right.

We regret that it has not been made available in final form yet. We think it is a very important item for a lot of different segments of the election field. The staff director may have more to say about this, because he is directly involved with it from day to day.

The majority of the Commissioners feel it is a priority matter. But in this recent budget crunch, we are suffering more and more. A lot of intervening events have interrupted the process.

Perhaps Commissioner Aikens can offer additional information on this.

Ms. **Aikens**. Mr. Chairman, in the 1978 elections, we did get the initial interim reports out prior to the election for the first time. In 1980, we stressed the Presidential elections. There was so much material filed for the Presidential elections that it was very difficult for our data entry people to enter both the Presidential and the House and Senate data.

Reports numbering 24,000 relating to the 1980 elections were filed with us, involving over 700,000 transactions. The mass of material just overcame the staff; they just simply could not get the RFA's out more quickly.

We did issue, this year, interim Presidential RFA's through the Presidential election cycle. We were not able to also put together the House and Senate package.

The **Chairman**. Senator Ford.

Senator **Ford**. I think our two witnesses have answered most of the questions I have had on my mind.

I believe the figure that we sent out last night on the continuing resolution, which either will be March 30 of next year or September 30—I believe that figure was $9,365,000. But in order to vote it just short of 7 a.m. this morning, we agreed to a 4-percent, basically, across-the-board cut, with restrictions and a limitation of 5 percent, I believe, in any one agency.

Assuming that the 5 percent is applied to the Federal Election Commission, that is roughly half a million dollars, if that applies for the whole year and not for just the 6 months. Can you survive with less than $9 million? You will survive, but you say it would be a slow death.

Mr. **McGarry**. It will be very difficult, Senator.

Senator **Ford**. If that cut is sustained throughout the fiscal year—we are now waiting for your 1980 reports, and I do not see how you got through the Presidential reports, let alone getting into the 700,000 transactions that Commissioner Aikens was talking about—what, then, will you have to forgo? This could be very dangerous, I think.

If you testify here that with these limited funds, you are not going to be able to do certain things, and then those of our constituents out there who file with you know that you are probably not going to be able to get to them, that, in my opinion, places an additional burden upon you.

But let us just for a hypothetical case say that you do sustain the full 5 percent and you are reduced below the $9 million figure. What is it you will not be able to do?

Mr. **McGarry**. It will cut across the board. The big cut will come in personnel, in just about all sectors of the Commission. As I indicated, even at this moment, under present circumstances, we are not adequately fulfilling all of our statutorily mandated duties. The optimum disclosure is not there; the data processing is weakened; the enforcement is weakened; and educational activities, which are extremely important, have been cut drastically.

The clearinghouse, which does a superb job, has been almost gutted and virtually eliminated. They work with election officials across the country. When they were fully functioning, they were the only repository in all of Government for information from State and local election officials across the country. Their work resulted in massive savings and tremendous aid to election officials in coordinating and systemizing voting standards, equipment, and a lot of other things.

As far as the Commission overall, cuts would occur across the board, disclosure, data processing, the RFA process, the educational function and all of the Commission's other vital activities, will suffer. That is tragic. We are involved in an ongoing, continuing, changing process with people constantly getting into the field. It is critical that there be someone to apprise them of the fact that there is a law, they must comply with it, and what the law consists of.

The staff director could probably pinpoint the areas where we would be cutting. I can assure you it is across the board. It would be a much worse situation than we have now. That is why I term it a slow death.

Senator FORD. That leads to this point, then. The most persistent complaint I receive from my colleagues here on the Hill and those who are running their campaigns is that the FEC nitpicks just little things, you know. I can give you an illustration.

Before the FEC was set up, a fellow sent me a check for $25; it was from Chicago. And I probably do not know my name now that the lights are out. [Laughter.]

Senator FORD. At least it is cooler.

The CHAIRMAN. Well, I want you to know that this is not a partisan act; that it is done in the presence of the Federal Election Commission. [Laughter.]

The CHAIRMAN. And I do not want to hear any grievance complaint that is submitted to the Commission about it.

Senator FORD. But I was tempted, Mr. Chairman; that was my gut reaction.

Let us go to this. A friend of mine whom I had not heard from saw in the paper that I was running; he sent me a check for $25. The five people we hired to look after checks and keep everything just right—the forms we had to do right for you, and the file to keep, you know, for 5 years and all those good things—they did not know him.

I happened to be in the headquarters one day and they said, "We have several checks back here from people we do not know." He did not have his home address on it. I said, "He is from Chicago," and where they could probably find him.

They did; they made a phone call, which cost us some money. They got his address, his occupation, and all those good things, and then when they typed up the form they said "Chicago" and left out "Illinois." So, I got a big red circle around "what state?" And that was sent back to me to correct.

I was written up in the paper, "Ford's filing with federal election commission erroneous," and so forth. You know, you had a redline, and that was sent back. So, I had to explain that I left off—you know, I was explaining, then, a frivolous thing, that they left off "Ill."

Now, that is nitpicking, in my opinion. I do not know whether you could just drop me a note, because I sent you a report of every dollar I received. If a person made a contribution to me of $1, it was on that list, and you had a thick list.

So, that $25 contribution brought the whole report back. Now you are telling me that, you know, you are not going to have personnel do this and do that—you are not doing it now, maybe, but you are nitpicking. How do we explain that?

Mr. McGARRY. I would say to begin with that any activity of that nature would be a pursuit of policy instituted by the Commission. In other words, the staff, on their own, cannot and should not be faulted for that.

Senator FORD. I am not faulting. I am just trying to— -

Mr. McGARRY. I just wanted to clarify something you said.

Senator FORD. Your biggest problem as far as I am personally concerned is the accusation of nitpicking.

Mr. McGARRY. There is some validity to that, and there is some validity to the statement that you are making here, Senator; I sincerely believe that.

In the past year, we have made tremendous strides in overcoming that kind of activity. You must bear in mind the problem we had. What I was trying to point out in a personal observation before you entered the room, Senator, is that, in the effort to turn around 200 years of custom and tradition where the laws were ignored, it may well be that the Commission went off in some wrong directions. It had a very, very difficult job.

There was an institutional mind set in this country that the election laws were going to be largely ignored. Then, we went to another extreme. What I was trying to point out to you is that perhaps if the staff had had no discretion, they could have corrected that, but they feel they have none.

The system is very carefully structured so that no individual staff person or Commissioner, even the chairman, can institute any kind of an inquiry on their own.

What you are talking about is nitpicking, and it is unfortunate. In the past year we have taken very positive steps; I seriously doubt that the example you gave would happen today.

I said in my personal observations, given the zeal the Commission had, I probably would have done just about everything they did in those early years. They were trying to perform this monumental task of turning the country around and getting an acceptance of the election laws, particularly observance and compliance with the brand new election reform law.

What you are talking about is absolutely right; it is unfortunate. We have however, taken steps to correct it.

Perhaps Commissioner Aikens can add to it.

Ms. AIKENS. Thank you, Mr. Chairman. What you say is absolutely correct. This would not happen today.

Senator FORD. Well, I heard it at 5 a.m. this morning when we were debating whether to limit your funds or not, and ultimately abolish the FEC. That was the intent of the amendment, and the sponsor of the amendment makes no bones about it; he wants to eliminate the Federal Election Commission and have an administrator for disclosure and the Justice Department handle enforcement. I was going to ask you that, but you have already elaborated on all of that.

The point to the amendment last night was to abolish the Federal Election Commission, and it stems back, I think—and I am speculating a little now—it stems back to the treatment he received when he was campaigning and when he was filing. I do not know what that is, and probably do not want to know, but I am under the impression that that is exactly what happened.

Mr. McGarry. I would only add one very brief comment, Senator, with respect to the nitpicking allegations. Some of them have been valid, but they can largely be explained by the horrendous job the Commission had when it came into being, trying to turn the country around.

I sincerely believe that it has done the job. The central issue, though, is not whether or not this is nitpicking. Even under the most ideal circumstances, somebody will reach out and find an isolated instance.

It is counterproductive to be engaging in a review of isolated nitpicking charges. We are very conscious of it and sensitive to it. We do not want to impact adversely on candidates or committees.

Senator Ford. Let me just say, Mr. Chairman, that they are not isolated complaints now; they are not isolated complaints. I bet you I can talk to every candidate that ran in 1980 and they will accuse you of nitpicking.

Mr. McGarry. But they are past history.

Senator Ford. I understand they are past history, but that is what we are living with now. We live a lot with history, you know, and the performance. I want the agency saved; I want you to do better and I want you to stay there.

Mr. McGarry. Yes, sir, and we deeply appreciate that, You have also been supportive and we appreciate it.

Senator Ford. What I am saying to you is I would like to lift this cloud away from the Commission. I get harassed because I try to defend you, and my harassment comes from your harassment that they call nitpicking—insubstantial corrections of their campaign reports or whatever.

Mr. McGarry. I want to assure you that we are very conscious of it. We are very sensitive to it and we are working at it. In the last year, Senator, we have taken great strides. You have been supportive. Your criticism is constructive and helpful. It is that type of thing that we genuinely want to overcome.

Senator Ford. John, I have got two quick things, and I have kept you too long now.

The 38 percent that did not respond in your report for 1980, are they all losers?

Mr. McGarry. No, no.

Senator Ford. They are winners?

Mr. McGarry. There were both winners and losers. Most failures to respond occur in the candidate field. It is my understanding—I do not have definitive figures on this—that political action committees are generally very good in reporting and bring the overall number way down.

With reference to candidates, the incumbents are much better.

Senator Ford. These are candidates——

Mr. McGarry. Incumbents and challengers, both.

Senator Ford. Did the incumbents and challengers lose in the primary or lose in the general election?

Mr. **McGarry**. I do not have the figures, but I would have to say mostly losers.

Senator **Ford**. Well, that is what I was thinking about that 38 percent.

Real quickly, Mr. Chairman, what is your feeling or do you have a comment as to independent expenditure groups—NCPAC's, Congressional clubs, or whatever is out there?

Mr. **McGarry**. That whole matter is in the hands of the courts and Congress.

The **Chairman**. Well, if I could just intervene, particularly in the light of the Supreme Court decision in the *Buckley* case.

Senator **Ford**. Yes.

Mr. **McGarry**. Absolutely right. We now have a major case pending which was argued in October by the General Counsel, Mr. Steele, who did a superb job. Incidentally, in my opinion he has done very well across the board representing the Commission in both defensive and offensive cases.

The pending case that involves independent expenditures is with reference to publicly funded Presidential candidates. As far as independent expenditures involving other candidates, the sky is the limit under current law. It is a matter that is in the hands of the courts and Congress. As far as we are concerned, they do have to report under current law. But other than that, the sky is the limit and our hands are tied. Certainly, that would be an area that Congress should take a look at.

Senator **Ford**. Thank you, Mr. Chairman. I apologize for taking so long.

The **Chairman**. No, indeed; I think it is important.

One of the complaints we had—and I am not going to launch on another series of questions, but I do have a couple of requests for information—one of the complaints that we have is, in essence, that the Commission is taking on too many lost causes.

I am not sure that the cases won or lost is any really valid criteria of whether your positions have been right or wrong, but that at least is something I think we ought to look at on the record.

One of the witnesses said that in reviewing the 1980 annual report, it showed that the Commission was involved in 65 lawsuits; 33 had been compromised or settled, and the Commission's position had been upheld in all but two of those cases.

I am wondering if you would provide us for the record with a kind of box score of litigation so that we can have an authoritative record of that.

Mr. **McGarry**. Mr. Chairman, with your permission, the most authoritative box score can come from the General Counsel, Mr. Steele, and I will defer, with your permission, and let him give it to you directly.

Mr. **Steele**. We would be glad to submit that for the record.

The **Chairman**. That would be fine if you would do that.

(See appendix VI.)

Mr. **Steele**. We have been quite successful. Our percentage when we last looked in May was above 90 percent for victories. We have been quite successful with the courts in getting them to look at major issues and help clarify the law. One of the major beliefs of the Commission is that where issues are of large proportion, such as Chairman McGarry mentioned with regard to the independent expenditures case, those should be put in front of the courts. We will supply the statistics.

The CHAIRMAN. Fine; I think it would be good to have it as a matter of record.

Now, two distinguished members of the committee, Senator McClure and Senator Helms, had each hoped to be here, and each have certain questions that they would like to ask you. Since circumstances prevent their being here, they are going to propound those questions to you in writing, and if you would be kind enough to respond in writing, we will make those questions and the responses part of the record.

I also have several other questions. Since we are going through that process with them, I will submit other questions to you.

Mr. MCGARRY. I can assure you, we will give you full and complete responses, with dispatch, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. MCGARRY. We appreciate the opportunity to appear before you and Senator Ford. Thank you very much.

The CHAIRMAN. We have one final panel, a panel of lawyers: Mr. H. Richard Mayberry and Mr. Paul D. Kamenar, members of the bar of the District of Columbia.

Gentlemen, judging by the volume of litigation that the existing law has produced, you should be among the only satisfied witnesses that have come before us.

Senator FORD. Which one is which?

Mr. KAMENAR. I am Paul Kamenar.

Mr. MAYBERRY. Good afternoon, Senators. My name is Richard Mayberry.

The CHAIRMAN. In which order would you like to proceed?

STATEMENT OF A PANEL CONSISTING OF H. RICHARD MAYBERRY, JR., LAW OFFICES OF RICHARD MAYBERRY, WASHINGTON, D.C.; AND PAUL D. KAMENAR, DIRECTOR OF LITIGATION, WASHINGTON LEGAL FOUNDATION, WASHINGTON, D.C.

Mr. MAYBERRY. With your permission, I would proceed.

Mr. Chairman, Senator Ford, I am a lawyer in Washington with a practice emphasizing political law. I have a prepared statement which I submit for the record, and will attempt to briefly summarize it.

The CHAIRMAN. I might say your full statement will appear in the record as if read.

Mr. MAYBERRY. Thank you very much, Mr. Chairman.

The committee staff has requested my observations as an election lawyer in advising persons and groups in their compliance and living under the election law. As a preface, and as a lawyer and as everyone agrees, the regulation of political activities necessarily affects cherished first amendment rights to participate in the selection of our form of Government. I believe the first amendment should be the touchstone in evaluating the current Campaign Finance Act and any amendments thereto.

In this context, I also realize the need to maintain and to perfect our election laws, but in a way to foster and facilitate political activity, not interfere with it.

As we all know, there has been a tremendous growth in the body of election law. We now have a fairly comprehensive historical experience with the 1976, 1978, and 1980 elections in judging the efficacy of the act.

As a lawyer, I find personally that most persons are making good-faith efforts to comply with what is a complex set of interrelated laws. Accordingly, I have also found that the role of the lawyer has been increasing. The increased role of the lawyer, in my opinion, in the political process is not good public policy. What I say about the lawyers is also true about the accountant's function.

Accordingly, I am recommending a phased reduction in the general tenor and extent of regulating the American political process; specifically, and as more explicity stated in my written comments, concerning those provisions of the Campaign Act affecting disclosure, contribution limitations, restraints on solicitation, and the exemption from the definition of contributions for the payment of legal fees.

I will make a brief statement, sir, on each. I personally believe the function of disclosure to be tremendously important to our electoral process. I personally do not feel that the FEC budget in relation to the collection, dissemination and enforcement against those not timely complying with the election laws should be reduced.

I do have two areas of concern under performance with our present disclosure laws; they are related. One is, is this information being disseminated out to the public and, therefore, meaningful, and what are the burdens on those living under the law?

Taking the two together, it is my conclusion that we need to simplify the task of recordkeeping and reporting so that we collect less information but more vital information, which consequently would be meaningful to laymen who are receiving it.

I believe that raising the thresholds for reporting of contributions to 50 percent of that which is the lawful ceiling on the making of the contribution by individuals would be a step in the right direction.

In addition, I believe we can lessen the number of reports—except perhaps those due close to an election—which are presently being filed.

In regard to the contribution limits, I would say that the flip side of preventing inordinate influence in the election is to insure that adequate campaign resources are available to all, and thereby promoting competition among candidates.

I believe public financing of Presidential races, plus contribution limitations which, in my opinion, are low, create inherent inequities, especially for minor party candidates, new candidates to the system, and generally those that may not be presently holding an office and are newcomers to running for office.

Consequently, I would recommend that the limits be raised both for individuals and political action committees.

As far as the field of election law, it has been my experience that one of the more substantive areas is advising trade associations on what is a "solicitation," in their attempt to deal with the prior approval requirements. This has forced the FEC to regulate speech of associations with their members. It is a very difficult requirement to comply with, especially during annual meetings and with articles in house organs in which you are discussing political action committee activities with corporate members who may not have approved a solicitation effort by that trade association.

In addition, Congress has put the FEC in a position of making a tremendous body of policy through advisory opinions in regard to what is a solicitation. Perhaps if these requirements do continue in present force, additional guidance should be in the form of some type of greater statutory definition.

Lastly, if I could, I have stated that most persons whom I have been involved with have made a tremendous attempt to comply with the election laws. As it is now, attorneys' fees are considered a contribution. In my opinion, it would be desirable public policy—and I do recognize that there is a regular employer exception already—to create an exception from the definition of contributions and expenditures for the payment of accountants' and lawyers' fees.

I believe the current exemption facilitates volunteer lawyering and accounting to campaigns, which is desirable. However, with the prolific amount of law which has developed in this area, it is akin to asking volunteer lawyers to advise a client on antitrust matters or securities matters, which are tremendously complex. A lawyer who does not regularly deal with that may find problems in advising a client on those areas.

Consequently, I believe we can bring even greater compliance by making available legal funds or accounting funds, which would not necessarily be controlled money in the sense of contribution limitations. Therefore, candidates and committees would not have to divert their hard dollars away from their primary role of electioneering.

It has been a great honor to be here today. Thank you very much for the opportunity to present my testimony.

The CHAIRMAN. Thank you, Mr. Mayberry, very much for being here.

Mr. KAMENAR. Mr. Chairman, thank you for the invitation to appear before the committee today. My name is Paul Kamenar. I am an attorney; I am the director of litigation with the Washington Legal Foundation.

I was formerly a staff attorney at the Federal Election Commission when they started back in 1975; I had been there from the beginning. I have worked in the agency. I have specialized in election law since I left the agency in 1976. I have litigated more cases against the FEC than any other attorney in the country, so therefore I have some experience about what kind of activity goes on at the FEC.

I have submitted written comments, Mr. Chairman, and I would like those to be submitted for the record.

The CHAIRMAN. Without objection, they will appear in the record.

Mr. KAMENAR. Thank you, Mr. Chairman. At the time I prepared those, I did not have the full benefit of reviewing your bill as well as the two other bills that were submitted. If possible, perhaps, I would like to supplement my written comments, focusing on those bills.

The CHAIRMAN. We would be very grateful if you would, and I would repeat what I said this morning that the bill that I introduced is simply a vehicle to encourage that kind of response and comment.

Mr. KAMENAR. Mr. Chairman, as a matter of fact, your press release even stated that this bill was a "starting point" for consideration of legislative changes which should be made in the FECA. I could not agree with that statement more, but I think we have a long way to go from the time of the starting point until we get to the finishing point.

Because of that, I think there are some substantial changes that need to be made in the FEC law, as well as the enforcement mechanism—changes that cannot be solved by minor tinkering or finetuning or honing of the present law. I think we should take a hard look at what we have done. Have, in fact, we created a monster here?

I think if you look at the testimony that I have prepared, one may wonder whether or not the Commission has restored confidence in the integrity of the electoral process, or, in fact, have they done the opposite? Have they caused basically a chilling effect in the exercise of first amendment rights?

Senator Ford mentioned very clearly the nitpicking aspect of the FECA. They do this all the time. I have not seen a let-up in it. I deal with clients and cases where the nitpicking type of aspect goes on all the time. But what makes that worse is another aspect; when you get into the first amendment infringement of associational rights of candidates, committees and individuals, it is not nitpicking to go after somebody's first amendment rights.

You are talking about going after 200 years of cherished, fundamental freedoms that we have developed in this country. The examples that I have given in my testimony—I have just listed about half a dozen. The most egregious is a recent one with the Phillips Publishing case.

Here, this publishing company has 10 newsletters; they put out one newsletter that is political in nature. They sent a solicitation out to people saying, "Subscribe to our newsletter; read about what is in this newsletter, about how the liberals are doing terrible things in legislation," et cetera.

That six-page commentary had three sentences that were derogatory of Senator Ted Kennedy. His campaign committee filed a complaint with the FEC, saying that this newsletter should be registered and come under the jurisdiction of the Federal Election Commission.

The Commission could not agree more with that charge. They launched a full-scale investigation, asking for all the bank account numbers of the publishing company, asking for all the names and addresses of the editorial staff of the publishing company, and so on and so on.

The Reporters Committee for the Freedom of the Press, which is not considered a conservative group, but one that advocates civil liberties, came in on the case as an amicus curiae. This, to them, was outrageous. We went to court and finally had District Judge

Flannery not only quash the subpenas, but order the FEC and enjoin them from any further investigation of this matter because it was so clear that it was in the ambit of first amendment rights.

Was this a case that happened 6 or 7 years ago? No; the decision just came down 4 months ago. Is the FEC really trying to change in this area? I do not see any improvement; it is just getting worse.

They went after the National Right to Work Committee in a case that cost the taxpayers and the committee hundreds and hundreds of thousands of dollars for legal fees; taxpayers' money involved in all of this, only to get a three-judge appellate court to rule that, again, the FEC was overstepping the first amendment and trying to reach their bureaucratic jurisdictional tentacles in an area where they do not belong.

The more you give that agency or any Government agency authority, the more they are going to hold on to their turf; the more they are going to try to get more turf to control. I think Mr. McGarry's comments just now illustrated that when a question was directed about independent expenditures.

Here, you had a Supreme Court decision state completely that this type of activity is within your first amendment rights. The first amendment is not a loophole. Yet, the chairman stated before you just a minute ago that with respect to these independent expenditures, the FEC's hands were tied and that perhaps Congress should do something about it. Their hands were tied. They would like their hands to be untied so they could reach out and get into areas where they do not belong under the first amendment.

I can go to chapter and verse in all of these cases that they have been involved with. The *TRIM* case, where they went after a group of leafleteers who spent $135 in New Jersey and New York passing out voting records of candidates—the FEC saw this outbreak of free speech in New Jersey and New York, sent down investigators, and brought a court case which, by their own admission, cost more than $50,000 of U.S. tax dollars to go and investigate this $135 violation.

The second circuit, en banc, 12 judges, ruled against the FEC. Chief Judge Kaufman said:

> The insensitivity to first amendment values displayed by the FEC in proceeding against the defendants compels me to add a few words about what I perceive to be the disturbing legacy of the FECA.
>
> I find this episode somewhat perverse. It is disturbing because citizens of this nation should not be required to account to this court for engaging in debate of political issues.
>
> "Our decision today should stand as an admonition to the Commission that, at least in this case, it has failed abysmally to meet this awesome responsibility."

They have failed abysmally; that is what Chief Judge Kaufman said about the FECA. They have failed abysmally time and time again. It is time for this Senate committee to take a hard look at the FECA and propose some fundamental changes.

Now, there is talk about, "Well, we are getting toward an election cycle; is it time to do that?" You are going to have to do it at some point or another, but if you advocate changes that open the system, I think the argument that we are getting into an election cycle is basically a red herring.

If, for example, you have a $1,000 contribution limit today and next year you advocate that there should be no limit, for example, great; there is no problem with anybody's campaign. They can just go back and get more contributions. If you open the system up, it will not work against any campaign; they would love it. It would not have any untold effects.

If you toned down the system and put more restrictions on it, then, of course, I would admit that as you got closer to the campaign, it would make it harder for that campaign to comply with those laws.

Briefly, on the substantive limits, I believe there should be no contribution limits. We have disclosure. I trust the American voter to decide whether or not, say, a $50,000 contribution from his grandmother is going to corrupt the political process, or whether that $50,000 contribution came from the president of General Motors. Let the voters decide.

We have disclosure; we are doing an excellent job in that area. I must compliment the FEC in that regard. Their public disclosure section is very good. I kind of doubt the 13,000 visitors a year figure, though. That is about 50 people a day, which is a little high, and I do not know how many of those have been repeat visitors.

But we have disclosure in the 50 States. The same forms that are filed at the FEC are filed with the Secretary of State. I doubt if people from California or Oregon or Hawaii come to the FEC here and examine those reports; they can go to the Secretary of State.

But, more importantly, when you are talking about contribution limits, we should look at not only the candidates, but at noncandidate committees. How do I corrupt the political process if I give, say, $50,000 to NCPAC or to the NCEC, the National Committee for an Effective Congress, because they do not run for office? They do not vote on any bills that could affect the public good.

There is just no compelling governmental reason to limit the amount of money that anybody can give to a noncandidate committee. I see absolutely no justification; the same with the annual limit. Currently, it is $25,000. Your bill, Mr. Chairman, would raise it to $40,000. That is a start; again, let us finish the job. I would advocate no limits on the aggregate amount.

If, for example, $1,000 is a corrupting influence on a candidate and I give $1,000 to 25 candidates, how do I corrupt the 26th candidate by giving him $1,000? It just does not make any sense.

Multicandidate PAC's do not have an aggregate limit. Why not give to the citizen voter more rights than are given to multicandidate PAC's? Accordingly, I think we should do away with those.

Corporate PAC's—the final area that Mr. Mayberry referenced about solicitation rules—this is absolutely ridiculous to have rules on who can be solicited and who cannot be solicited. Why should I not be allowed to receive in my mail a solicitation from COPE or SUN-PAC or a corporate or other labor PAC? If I do not like it, I can toss it right in the wastebasket.

There is absolutely no compelling governmental reason why this kind of information, which is solicitation and talks about political activity, cannot be disseminated to everybody. If you do that, you eliminate half of the FEC's requirements and half of all of their advisory opinions and regulations on whether you can post a notice on a bulletin board in a corporate lobby, because somebody who is not in the solicitable class might pass by and their eyes might fall upon this salacious material on the bulletin board?

It just really is ridiculous, and I just think that, in conclusion, we should reexamine this in a way that gives the first amendment some breathing space and does not suffocate the first amendment.

Thank you, Mr. Chairman. I am open for questions.

The **Chairman**. Thank you.

Let me ask each of you this question. Do you think there is any merit in the proposal to remove enforcement powers from the FEC to the Department of Justice?

Mr. **Kamenar**. May I answer that, Mr. Chairman?

The **Chairman**. I hope you both will answer it.

Mr. **Kamenar**. OK. I would like to address myself to that question.

The arguments that we have been hearing today that there have been 3,000 referrals, for example, in past years to the Justice Department and they did not do anything about it—what we have not been told is what was the nature of those 3,000 referrals. Was it because they forgot to put "Illinois" after "Chicago," for example? Was the ZIP code missing?

The FEC filed those kinds of cases, for example, against the Reagan committee for not having the occupation of certain contributors, and that case, of course, was slapped down by the courts.

I think the Justice Department can come into cases where there are substantial violations. We can get away from this nitpicking. Right now, under the law, the Justice Department has criminal prosecution. The FEC has referred, I believe, several cases over to the Justice Department for criminal prosecution, and it is up to the Justice Department to decide whether they are serious enough or not.

I do not think the FEC should have the litigation authority that they do have, because they have abused it. Any government agency will just want to expand on their jurisdiction. I think it belongs with the Justice Department.

Mr. **Mayberry**. Mr. Chairman, may I respond to that, also?

The **Chairman**. Mr. Mayberry.

Mr. **Mayberry**. It may be desirable to bifurcate enforcement, with disclosure on the one hand, and other types of offenses, like 441(b) violations, on the other. In my opinion in regard to disclosure violations—the forum for compliance should be maintained with the Federal Election Commission, and this should be a forum in which resolution on an expedited and fast basis can be had.

For example, I recently went through litigation on the local level concerning issues, not candidates. Major charges went back and forth—and this was in regard to a local initiative here in the District of Columbia, initiative No. 7. I represented the proponents.

One of the main themes of the opponents was that there was money raised and spent to promote an initiative from out-of-State sources—from a national organization—and this was used in their local electioneering.

Yet, my client came to me, and in the Washington Post it was reported, that approximately $200,000 was being made available to the same opponents from certain labor organizations, and a check of the reports indicated that that had not been disclosed. It was not disclosed prior to the election.

In my opinion, lack of an enforcement mechanism in regard to disclosure would be wrong, and in my opinion, the FEC can best handle that function. On the other hand, nondisclosure types of offenses—I believe that there is a need, whether it is the FEC or Justice, for major case approaches on significant violations, rather than going after the small violations. And perhaps Justice may be better suited to exercise that type of discretion.

The CHAIRMAN. What do you think about the performance of FEC in the area of enforcement, as judged by the measure of consistency in the application of the law?

Mr. KAMENAR. Well, I think I would say they are consistently bad in terms of enforcing the law. I have given you many examples where they have gone after cases where they just do not belong.

And the other enforcement aspect is, like Senator Ford pointed out, there is all this nitpicking type of activity. Their audits, for example, are erratic in terms of whether they are going to go after somebody for audit violations after it is discovered or not. It is very arbitrary.

I mentioned that *Phillips Publishing* case. They went after them, basically, with a vengeance. We submitted in court the same type of example where Penthouse magazine—Bob Guccione—had an ad about Jimmy Carter. "Subscribe to Penthouse and read about how Jimmy Carter is terrible," et cetera.

The FEC did not go after that. Now, why did they not go after that case, but went after the *Phillips Publishing* case? The court, by the way, cited the *Penthouse Magazine* case in our case in showing that there is this uneven enforcement.

I think, for example, the National Right to Work Committee case is another example of uneven enforcement, where they had to go to the court and get the FEC to go after union violations.

The CHAIRMAN. Well, now, you have worked for the FEC. Why do you find this uneven situation in enforcement?

Mr. KAMENAR. Well, when I worked there, Mr. Chairman, I was in the advisory opinion section, basically; I was not in enforcement. I was writing the Presidential financing regulations; that was basically my bailiwick or speciality there.

Why is this? I think it is because you have, again, basically the structural defects. You have a law that allows an agency to put its hands on certain jurisdictions. You give them the steppingstone, and any agency that has that—they have young attorneys in the general counsel's office; they want to get that court experience.

I have heard off-the-record statements saying, "We are here to get the court experience of litigation." So, if they have a case that is questionable, are they going to recommend, "Look, let us not spend the taxpayers' money on something like the *Phillips* case; we have got better things to do?" No; they are going to say, "Let us go after this because that way we get to have depositions and travel around the country and go into court and make oral arguments before the judges."

That is maybe one of the issues; I do not know. I think you would probably have to ask the Commission more about that.

Mr. MAYBERRY. I would concur with Mr. Kamenar's analysis on that point.

The CHAIRMAN. What about their attitude toward the volume of litigation? It seems to me that most government agencies want to keep litigation to a minimum. Perhaps an agency such as the Internal Revenue Service may go for a few exemplary, high-profile cases, but they do not want to be in court all the time. Other agencies more or less follow the same philosophy. What about FEC?

Mr. MAYBERRY. The FEC seems to have more of a willingness in a greater number of lawsuits which may or may not contribute to the proper making of law or constitute significant violations. I believe that this is a problem.

In a way, the budgetary restraints which will be imposed on the FEC, provided they do not interfere with the disclosure function, may facilitate the litigation function and force a major-case approach in dealing with cases of egregious violations and intentional violations—in the civil context, those that are worthy of bringing the auspices of the government against an individual or a group.

I think there is a difficulty in the conciliation process where an admission of guilt is part of the agreement. This spurs litigation because many people feel that they do not want to admit something that they may not feel was guilty-type conduct with malice or some type of intent. So, that may spur, in and of itself, litigation.

The CHAIRMAN. Senator Ford.

Senator FORD. Mr. Chairman, I will try not to take too long, but both gentlemen have whetted my appetite just a little bit, to say the least.

Mr. Mayberry, let me ask you a question or two, and the other—is it Kamenar?

Mr. KAMENAR. Kamenar.

Senator FORD. If you wish to respond, that would be fine with me, and vice versa, when I get around to you.

Mr. Mayberry, you recommend increased funding for the disclosure function of FEC, or at least maintain the real-dollar funding, as I understood it. Do you consider the enforcement section of the FEC to be an integral part, I guess is the way I would put it, of the disclosure system, or would this recommendation apply only to those sections directly involved with recordkeeping?

Mr. MAYBERRY. It would apply only to those directly involved with violations affecting lack of disclosure or violations affecting disclosure. In other words, if you have an agency that is collecting information and making it available, if people do not comply with that law, it would make sense in my mind that the same agency could be in a position to enforce compliance.

Here, there is a need for expeditious handling if that information is going to be timely and of value to the electorate prior to an election. To put that function in the Justice Department, in my opinion, would be a mistake for violations of disclosure provisions; nonfilers refusing to file; filing months late; substantial noncompliance with substantial amounts of money, and those sorts of problems.

I know you (Senator Ford) have referenced a concern that if "Chicago" is there, could they not, in effect, fill in "Illinois" on a $25 contribution, which does not have to legally be itemized anyway? This is foolish.

Senator **Ford**. Right.

Mr. **Mayberry**. And this is improper, but I am not referring to that type of oversight by the Commission.

Senator **Ford**. What purpose do you see served by the reporting of corporate and union payments for administrative communications and solicitation costs of their sponsored PAC's?

Mr. **Mayberry**. Sir, I hope I have stated this correctly in my written statement. If I could step back a minute, what are we after with disclosure? What are we after? We are after taking vital information concerning support of candidates and bringing it forth to the electorate so they can make a reasoned decision toward that candidate as far as any affiliations that that candidate may have.

Now, why do we need to do that? We need to show money received and money spent. In my opinion, the reporting of receipts and expenditures by a political action committee connected to any type of economic activity—the contributions should be reported, but I do not see a need to report the administrative expenses that go into the collecting of their voluntary donations.

I can see a need to report publicly some activities, like registration and get-out-the-vote drives. That is an area in which there is no public revelation whatsoever. That is one element missing out of political activities by economic units, be it corporations, trade associations, or unions.

Partisan communications are presently reportable, $2,000 or over. I think there should be some reporting of each of those, but there should be only that reporting which would be vital information.

I believe one of the problems with the collection of the information is we collect such a prolific amount, reams of paper, that it has lost its value to the electorate. Therefore, I have strongly recommended reducing the amount of information which is collected—that which would be vital to a determination by the voter in the conduct of a candidate or a political committee.

Mr. **Kamenar**. If I can just touch on that, I generally agree with the overall view of Mr. Mayberry on this issue. Whether or not the FEC should be involved in things that maybe the SEC or the Department of Labor should be involved in—namely, the inner workings of a corporation or the inner workings of a union—as a matter of fact, there is a petition for rulemaking pending at both those agencies to require the disclosure of administrative costs of the PAC.

The Washington Legal Foundation has a similar petition with the Department of Labor that would require, under the LMRDA, the annual disclosure by the unions of how much they spent on compulsory dues for political purposes.

So, I do not know whether we need the FEC to be that agency to do that, but I do, as a tangential matter, support the bill introduced by Senator Helms, S. 1550, that would prohibit the use of compulsory dues or fees, whether it is corporate or union, for these political purposes. I think that is really in the public interest in terms of not requiring or forcing people to subsidize a political activity that they do not believe in.

Senator FORD. Let me ask you, then, this question. You referred to the Chairman's piece of legislation, as he did; that it is a starting point.

Mr. KAMENAR. That is correct.

Senator FORD. And it is a long way to get to the finish line. Will we ever arrive at the finish line?

Mr. KAMENAR. I would hope so.

Senator FORD. But there are changes every day, and we find new things that need to be injected into the legislation law or the way the agency functions and that sort of thing. Basically, are we not trying to improve all the time, and when we find something that does not work should we not remove it?

I am sure you cannot tell us that everything is going to work perfectly. If you do not do anything, then they are out, so that eliminates all of it. But under the circumstances, I do not feel we are going to eliminate—we may eliminate the Federal Election Commission, but their responsibility is going to be spread somewhere. Therefore, we will never arrive at the finish line.

Mr. KAMENAR. But I would hope that when we are doing this, we will take a serious look at some of the fundamental structural, substantive provisions of the law that basically call for and trigger all of this type of enforcement. One, for example, is the solicitation rule by the corporate and union PAC's; again, no reason for that.

If you eliminated the contribution limits, in many cases you would not have the FEC coming up to somebody and saying, "Well, you can only give $1,000, and you gave a typewriter. That is $50 extra; therefore, you are over your limit and therefore we are going to regulate that and we have to check and account for all of these paper clips and pencils," and you get your nitpicking argument again.

So, if you do some structural changes, each time you eliminate another provision of the law, that eliminates some more funding you need for that agency. It eliminates another three or four pages of regulations and advisory opinions, et cetera, et cetera.

So, I hope we get there, where we open the system up rather than try to close it down.

Senator FORD. You made a statement a few moments ago about attorneys going to the Federal Election Commission and trying to make a name for themselves. Did you leave for a lower salary?

Mr. KAMENAR. Did I leave for a lower salary?

Senator FORD. Yes. [Laughter.]

Mr. KAMENAR. Well, I started out on my own practice, so for the first year or so, it was a lower salary. But I did not mean to say that it was done to make a name for themselves because, to be quite frank with you, I would not want to have my name on some of these kinds of cases where the court throws you right out of court.

I think what I did mean to say was that—and this is like any government agency; I am not trying to pick on the FEC—you have young attorneys coming out of law school and they want to get in there and, you know, sue. "Let us litigate; let us do things."

Senator FORD. There is also one other thing. How many experienced lawyers downtown can the Federal Election Commission employ?

Mr. Kamenar. I do not understand.

Senator Ford. I mean, with salary limitations, how many experienced attorneys are willing to come and give up all that income to work for the Federal Election Commission?

Mr. Kamenar. Well, I know that there are a lot of young attorneys out there that are pounding the pavement.

Senator Ford. Well, I understand that, but they are all young attorneys.

Mr. Kamenar. Right.

Senator Ford. And the young attorneys have to get some experience.

Mr. Kamenar. Well, I think in any Government agency, you have your higher level Government attorneys—your GS-15's that get paid a very good sum of money—$45,000 to $50,000 a year, which, for 3 or 4 or 5 years out of law school, is not bad money. I think the salary is not the part; part of it, of course, is the area of the law that you are interested in.

I think that the attorneys there, in many cases, know the law and want to enforce the law, but I think they just get a little overzealous. And I think the Commissioners are to be faulted for this, because it is the Commissioners who give the final say of "should we go in this courtroom or not." They have four Commissioners that can put a check on this, so the question is, do the Commissioners have the proper supervisory responsibility, and are they exercising it properly?

Senator Ford. Well, a representative from the Chamber of Commerce made a statement in my office not too long ago that one of the reasons industry is beginning to be harassed and some of the agencies are moving forward is that there are so many lawyers being graduated now that they finally are getting some good ones.

Let me ask you another thing. Why, for a noncandidate committee, should we take the limit off? Why? You said a while ago that if it is a noncandidate committee——

Mr. Kamenar. One of my proposals is to take away contribution limits to the candidates. You have asked me why.

Senator Ford. No; you said a noncandidate committee.

Mr. Kamenar. A noncandidate committee.

Senator Ford. A noncandidate committee; take the limit off.

Mr. Kamenar. Take the limit off. There is absolutely no reason why we should have limits on noncandidate committees.

Senator Ford. Do you represent any union PAC's?

Mr. Kamenar. Pardon?

Senator Ford. Do you represent any union PAC's?

Mr. Kamenar. No; I do not.

Senator Ford. What do you represent?

Mr. Kamenar. Well, I represent——

Senator Ford. The Washington Legal Foundation—what is that?

Mr. Kamenar. It is a public-interest law firm.

Senator Ford. A public-interest law firm?

Mr. Kamenar. That is correct.

Senator Ford. All right. I am trying to get an answer, and we are in trouble on trying to get that answer.

Why should we take the limit off of a noncandidate committee that is going to harass the heck out of you as a candidate, and lie about you, write anything they want to, and go out and just smear you for all it is worth, and just let him go free? But the fellow who is running, whose name and character is on the line, being smeared by the noncandidate committee has to be harassed not only by the noncandidate committee, but he has to be harassed by the Federal Election Commission because he has got to file, he has got to disclose, he has got to do right.

As Terry Dolan said, you know, "We can lie and it does not make any difference," but that candidate gets caught up in that.

Mr. KAMENAR. Senator, I fully appreciate your concerns; I understand them 100 percent. That is a problem, and I do not want to be facetious, but no one said running for office is an easy job.

Senator FORD. I know that.

Mr. KAMENAR. If you are going to subject yourself——

Senator FORD. I can show you whips across my back, you know. [Laughter.]

Mr. KAMENAR. But the question here is that we have to look more at the fundamental question in terms of our 200-year history of first amendment rights of free speech. To lie about somebody and to libel somebody is not within the ambit of the first amendment. To talk about somebody's voting record and to give your opinion about somebody is the essence of our electoral process and our political process.

When you start limiting that, then we are in very deep, deep trouble.

Senator FORD. Let me ask you a question. Are you in agreement that the noncandidate committees should keep themselves separate from the candidates and not have communications and take polls and refer them to each other, and that sort of thing? Do you agree with that?

Mr. KAMENAR. I agree with anything that promotes the first amendment, and if a noncandidate committee decides that it wants to take polls and that it wants to have either positive or negative ads, that is a first amendment, cherished right that we should not limit.

If they want to, instead, simply give money to a candidate or if they just want to raise money and then just give $5,000, or whatever the limits are going to be, to the candidate, that too is the way they choose to express their associational first amendment rights.

Senator FORD. Well, what you are saying, though, is a noncandidate committee or PAC—you want them to be able to do whatever they want to—give me money as a candidate, or run positive ads for me, and there is no connection and it is not charged up to me, or just give me the devil 18 months prior to the election and run ads and ads and ads against me, but not for anybody else. That is basically, indirectly—and I think it is directly—in favor of my opposition.

Mr. KAMENAR. Well, that may be, but again I would just have to come back to my fundamental principles here, and I am resting my whole case on the first amendment. Although you experience it out there and you have got the lashes on your back, that is the price you pay for democracy.

Senator FORD. I got mine from Nader; I did not get them from NCPAC or anybody else. [Laughter.]

But, you see, there is something very frustrating. You have stayed on the first amendment. You have never answered one of my questions; you go back to the fundamental rights under the first amendment. I am trying to find some answers.

You have never been forthright with me this afternoon in answering my questions.

Mr. **Kamenar**. I have tried, Senator; believe me, I have tried.

Senator **Ford**. I know, but you kept talking about the fundamental rights under the first amendment. Should the Federal Election Commission have some jurisdiction over the noncandidate PAC's?

Mr. **Kamenar**. They do.

Senator **Ford**. All they have to do is file.

Mr. **Kamenar**. They have reporting obligations just like you.

Senator **Ford**. That is all.

Mr. **Kamenar**. Well, what do you want them to do?

Senator **Ford**. Well, should they not have some responsibility of reporting what they are doing? Did you read Dave Broder's article the other day as it related to Mr. Rollins—the new political man at the White House?

Mr. **Kamenar**. I did not read it, but I heard about it.

Senator **Ford**. OK. Do you agree with that? That is putting the noncandidate PAC's right into the political system by that statement.

Mr. **Kamenar**. I disagree with——

Senator **Ford**. So, you are not disassociating yourself if you allow yourself to be in that meeting to discuss where you are going and what you are going to do, and both parties know. As soon as you decide what you are going to do, off you go.

Mr. **Kamenar**. Well, wait a minute. I do think that if there is coordination and consultation on that expenditure, the FEC does have jurisdiction, and they exercise that jurisdiction. You already have the agency doing that.

If, on the other hand, it is an independent expenditure, the Supreme Court has said you cannot touch it, and I think there is a dividing line. So, I think there is an answer in some respects that you would like to see; that the FEC does, indeed, have jurisdiction over this.

I think they overextend their jurisdiction a bit when they try to see whether or not a campaign is independent or not, and it causes a chilling effect on people that are afraid to share a cab with somebody that is in a campaign because they may be seen colluding on some campaign strategy when they are not.

Senator **Ford**. Well, we have the sunshine law, and that has done very well as it relates to local offices and that sort of thing.

Let me just read this to you, my friend, and I want to ask you a question, and the question is, can a noncandidate committee, if it is involved in this particular situation, maintain its noncandidate posture?

I quote from Mr. Rollins, who is the newly appointed political director with regard to groups such as NCPAC, and this comes from Dave Broder's article, and I quote Mr. Rollins: "Very clearly, we will be meeting with them regularly to tell them where we are heading and let them tell us what they are doing."

Now, if a noncandidate PAC is involved in that kind of a conversation, is that PAC still a noncandidate PAC?

Mr. KAMENAR. Based on that quote you just gave me, Senator, I see absolutely nothing wrong with that because there has been absolutely nothing stated that coordinated an expenditure for any particular candidate. All they are doing is exercising their first amendment rights to discuss policy with the White House.

Whether you are Joe Citizen from Dubuque, Iowa, or whether you are Terry Dolan or whether you are anybody else, you have the right to do that. So, I do not see any problem with the fact that they are going to consult with the constituency, whether it is the women's lib movement or some other kind of group. That is what we are all about.

Senator FORD. Well, as I understand it—and I am going to quit, Mr. Chairman—I am very frustrated about this because Mr. Richards of the Republican National Committee was very vocal in this regard today.

Mr. KAMENAR. I can understand; it is going into his turf.

Senator FORD. Yes. Well, I am just saying that he was very vocal about that this morning, and he disagreed with this particular thing.

As I understood a noncandidate PAC's position, it was that it should not associate itself with a candidate. Am I correct in that?

Mr. KAMENAR. Well, no. A noncandidate committee, under the FEC law, basically is a committee that is not authorized by the candidate in writing to be an authorized committee. If it is not authorized, it is a noncandidate committee and they can do either one of two things: Either give money directly to a candidate, or they can make independent expenditures.

Senator FORD. OK. So, that is either one or the other?

Mr. KAMENAR. Or both.

Senator FORD. Or they can do both?

Mr. KAMENAR. Yes. But they cannot, if they are going to make an independent expenditure, collude with the candidate and say, "Hey, how do you like this ad we are going to run next week? Do you approve it or not?"

Senator FORD. Well, is there not just a little bit of collusion in what Mr. Rollins is saying? At least you know what they are doing.

Mr. KAMENAR. Well, I think it may be a little bit, but not enough to call in the power of the FEC to stop this kind of activity. It does not collude on the actual expenditure that this committee may or may not be making.

Senator FORD. Well, if you know what one party is going to do and they know where you are going and you swap information and each knows what the other is going to do, and then when you leave there, both parties know. That is just like knowing the signals when the quarterback calls the signals on the other team. You know whether it is going to be offtackle or whether it is going to be a pass or an end run. You are going to be right there and your team is going to be right there to block them.

Mr. KAMENAR. The FEC can regulate. Now, if they think there is something there, they can issue subpenas and correct it.

Senator FORD. But, you see, we are going to be making some corrections in the law, and I want to be very sure, because this is going to be an emotional thing. And I may be pushing a little too hard, and I apologize to you if you think I am.

Mr. **Kamenar**. That is perfectly OK.

Senator **Ford**. I am getting pressed, and I am sure the chairman is getting pressed, and all of us are falling into that. A national chairman, for instance, was here this morning and made that statement. So, you find it in every arena or every level of the political system in this country, and you find that the noncandidate committees are causing other noncandidate committees to be organized to butt those two.

One is going one way and one wants to go the other, so one damages one candidate and the other one damages the other candidate. What have you gained? You might as well have gotten in bed with the candidate and gotten out there and given him your help instead of running the other one down, had you not?

I mean, that would have been leveling with the general public; would it not?

Mr. **Kamenar**. Perhaps.

Senator **Ford**. There would be no deception in that.

I thank you, Mr. Chairman.

The **Chairman**. Well, I thank the witnesses for being here and I might make this further request of them since they are in town; that they be available as we thread our way through this.

Mr. **Kamenar**. Yes, right.

Mr. **Mayberry**. Anytime.

The **Chairman**. We all agree we have got a long way to go. No one seems to have all the final answers at this point, and so we will look forward to working with you.

Senator **Ford**. Let me ask Mr. Mayberry a quick question.

Do you have your own firm, a private firm? You are not a public——

Mr. **Mayberry**. I have a private firm here in Washington.

The **Chairman**. Thank you both very much.

Mr. **Kamenar**. Thank you, Mr. Chairman.

Mr. **Mayberry**. Thank you very much.

[The following prepared statements were received for the record:]

PREPARED STATEMENT OF H. RICHARD MAYBERRY, JR., ESQUIRE, LAW OFFICE OF H. RICHARD MAYBERRY, JR.

Mr. Chairman and Senators, I welcome the invitation of the Committee on Rules and Administration to testify today.

INTRODUCTION

I am an attorney in private practice in Washington, D.C. My practice involves advising on the legal aspects of group participation in the political process. I have served as Editor of an election law newsletter and do participate in seminars directed at educating attorneys and professionals on the requirement of election law as well as teach a graduate course at The George Washington University on campaign finance and regulation of the political process. The views expressed herein are my own, and are not intended to necessarily represent the views of any other person.

The Committee staff has advised me this portion of the hearing is devoted in part to examination of regulation of the political process as viewed from the vantage point of lawyers advising under the Federal Elections Campaign Act of 1971, as amended (the "Campaign Act").

THE PUBLIC POLICY DILEMMA: ENCOURAGING PARTICIPATION WHILE MAINTAINING THE INTEGRITY OF THE PROCESS

Any regulation of campaign finance necessarily affects the exercise of core First Amendment rights by individuals and associations of individuals in determining the form of their democratic government. The principle of free speech and association fostered by our founding fathers and embodied in our Constitution is, perhaps, easy to state, and difficult to apply—but must be the touchstone to evaluate appropriate policy in campaign finance regulation.

The Campaign Act was enacted to protect the integrity of American elections from actual and even the appearance of corruption. Accordingly, election laws, among other things, prohibit certain sources of influence in our electoral process, such as the proscription against contributions from foreign nationals; control the amount of campaign support which may lawfully flow in the financing system through placement of contributions limitations; require public identification and revelation of financial transactions by participants in the process through disclosure provisions; and create an agency, The Federal Election Commission ("FEC" or "Commission") to administer and enforce the law.

Every provision of the Campaign Act necessarily affects enjoyment and exercise of cherished political rights, and every amendment thereto has foreseeable and unforseeable, direct and indirect, ramifications on the functioning of the system. Only through a thorough examination of the goals, or underlying policies, and the real effect of campaign finance regulation, as is being undertaken through these public hearings today, can meaningful modification and amendment of the Act be undertaken. I attempt to bring forth that which I have observed in my political law practice.

TREATING POLITICS AS A REGULATED ACTIVITY

The enactment of the Campign Act in 1971, with subsequent amendments; the promulgation of numerous regulations and their revisions; the issuance of advisory opinions; and, the enforcement of actions under the Campaign Act resulting in Matters under Review and judicial opinions and decisions have produced a growing and substantial body of what I will call "political law." The effect of this in general on those participating in the political system, from the volunteer licking stamps to the professional political activist, has been one of vexation and frustration when the legality of each action must be cautiously determined in what otherwise is often spontaneous activity.

The Campaign Act has resulted in adjustments in the operation of our fundamental constitutional system which, despite periodic national scandal and outcry from "campaign reform" organizations and the institutional press, has functioned well. This is especially apparent when viewed in comparison to other nations who find orderly change and transition of national leadership which is probably necessary in every society to react to changing times and shifting public needs so difficult.

In my experience, the role of the attorney in the electoral process has been continually expanding with the growth of the body of election law. Without qualification I can state that although the attorney serves, and will continue to serve, an important role in the process, enlargement of the lawyers', or for that matter the accountants function in the political process is not desirable policy.

However, the attorney is but an interpreter and advisor and challenger of any law. The proper focus is what cause leads to increased activity of attorneys. I would submit the answer lies in the current state of a highly regulated political process, and with the periodic changes the Campaign Act is subject to on approximately a biennial basis. The need for perfection of the law is clear, but the confusion of new law on those regulated is equally obvious.

The perfection of the Campaign Act itself poses a dilemma in reducing what some perceive as over-regulation without traumatizing the fundamental process or increasing the need for lawyers. For example, it is fundamentally unfair, in my opinion, to create a complaint procedure yet deny an opportunity to be heard before the FEC by Respondents in enforcement actions. However, any type of hearing procedure can only mean more FEC growth, more legal costs for political clients, and a greater function for the lawyers.

However, certain elements of the campaign law such as the reporting requirements and solicitation provisions clearly need revisions. Yet amendments, even those meaning some, but fewer burdens to meet, create uncertainty and anxiety to those laymen who have a workable formula in complying with present law. Consequently the lawyer is again more greatly involved to ensure proper compliance with new law.

I do not attempt to resolve this inherent conflict in the need for perfection of current law and the need for better but perhaps less regulation, but the answer may lie with a "phased reduction" in the degree of campaign finance regulation. I submit the following recommendations would lead to greater citizen involvement without permitting corrupting influences into the system; and would perfect present regulation with the least disruption:

1. MAINTAIN FEC DISCLOSURE FUNCTION, BUT LESSEN THE RECORDKEEPING AND REPORTING REQUIREMENT

The FEC has to the satisfaction of most met its statutory duty in collecting and making available campaign finance information.

A. The FEC budget for performing the disclosure function should be maintained in terms of real dollars and, perhaps, increased.

B. Continued efforts to collect relevant and timely information should be sustained and, perhaps, disseminated more widely to the electorate.

C. Unfortunately, I believe the information collected efficiently fails in being efficiently transmitted to voters. Too much reliance is placed on the Washington-based press corps to study and interpret available data.

D. Increased capabilities to transmit campaign finance data to the states, and facilitation of systems to permit fast turn-around response to voter requests for such information should be considered. Modern computer capabilities, and efficient courier systems make this possible and feasible.

However, equally important to the disclosure function is greater control on the contents of that which is transmitted to the voter. The amount of information is prolific in both volume and complexity. Meaningful layman interpretation is often difficult.

In my opinion, requiring less disclosure from candidates and all types of political committees would make the information more comprehensible to the citizenry, would be consistent with the tenents of First Amendment activity (including a privacy right of small contributors) and would require less allocation of crucial resources to the legal and accounting aspect of a campaign or for a political committee. This may facilitate citizen involvement which has been lackluster with only approximately one-half of the electorate exercising their franchise in recent elections. This can simply be accomplished by easing recordkeeping and reporting obligations of those subject to the Campaign Act.

Since disclosure is only meaningful to the voter if it is in a comprehensible and manageable form to be understood by the layman, the contents of each report should be dramatically reduced. I recommend:

A. Raising the threshold for disclosing receipt of contributions received to reflect the larger donors only. The small donor needs encouragement, not public revelation for giving to a candidate.

B. Accordingly, recipient political committees need only itemized receipts of over 50% of the legally permissible contribution limit from individuals and 30% from nonindividual givers, as political committees. Any argument that the public needs to know (or even wants to know) the source of such a contribution is not accurate.

C. Eliminate reporting any disbursement not constituting a contribution or independent expenditure. Public interest in campaign reports could be heightened by separating the "wheat from the chaff" and expunging payments for staff and other administration expenses.

D. Current law, only requiring a biannual report in most off election year situations is a step in the right direction. One year-end report (absent special elections activity) in non-election years may be sufficient.

E. In election years, except when primary elections are involved, one report may be sufficient for the first half of the year.

F. Creating additional requirements for reporting of administrative expenses of a PAC and the costs of corporate and labor party communication costs under $2,000 would produce more volume in disclosure information which the public may not desire.

Requiring the candidates and political committees to record and report financial information, and the FEC to collect and disseminate this information is only justifiable if all register and report timely.

A. The threshold for registration of a candidate of $5,000 could be raised to $10,000. A threshold, perhaps less, $2,500 or $3,000 should be applied to the definition of all political committees and separate segregated funds. This would eliminate non-serious groups without evidence of more than a modicum of support from having to register and in turn lessen the information the voter must digest thereby making the information more meaningful. It would also reduce the problem of the FEC in dealing with non-filers as most serious candidates and committees will voluntarily identify themselves.

B. However, the FEC should, without the drain in resources necessary in enforcing non-serious candidate/committee registration, vigorously and relentlessly enforce the law against non-filers and those not timely filing, especially just prior to an election. Accordingly, continued reporting within ten (10) days of elections of receipt of larger contributions would be desirable.

C. However, I do not believe the FEC should have the general authority to provide by regulation for waiver in part or whole of the disclosure provisions. Congress should retain this significant authority, and with the counsel of the FEC and others, should issue statutory exceptions.

2. IMMEDIATE INCREASE AND INDEXING OF CONTRIBUTION LIMITATIONS

The policy underlying contribution limitations is to prevent inordinate influence on the election process, as that which may be occasioned if unions or corporations, who amass significant resources in their treasuries, were permitted to directly contribute in connection with a federal election. This is, of course, illegal, and has been illegal since 1907 for corporations under the Tillman Act.

A commonly heard adage is "money won't win elections, but without it you can't win." The one necessary correlation to prevention of corruption through contribution limitations flowing from this adage is that controls on the amounts of money from permissible sources, such as individual American citizens, should not be restricted so as to prevent sufficient resources from being available to candidates. Greater citizen involvement in elections should be encouraged, not neutralized.

The need for sufficient resources, especially for challengers and first time candidates and for so-called "early money" is required to promote competitive elections among candidates which would facilitate a robust debate on current issues. Public debate in our modern society requires significant sums for media use in communicating to the electorate.

A. The individual contribution limits should be raised to at least $5,000 per candidate per election. The aggregate annual contributions should be increased from $25,000 to $40,000 or $50,000.

B. Recognizing the need for a differential for committee involvement, noncandidate committees should be permitted $10,000 per candidate per election.

Whatever the amount that is deemed desirable for a contribution ceiling, this sum should be indexed to the Consumer Price Index to adjust for inflation. Inflation has, of course, had a pernicious effect on anyone, including candidates, who are consumers of goods and services. Once Congress has established such a limit, it should be retained in terms of real dollars.

I believe these steps would bring more money, especially the all-important seed money for the new candidate or political committee, into the system and promote increased competitiveness. Moreover, more election money would be allotable, because less money would be expended in the more expensive present forms of raising money as by direct mail.

The greatest checks and balances to problems of disproportionate financing between candidates is the test of the political market place. An informed citizenry is fully competent to vote against candidates whose affiliations may be out-of-state groups or to select individuals or groups of individuals within a state.

3. ELIMINATE RESTRAINTS ON SOLICITATION

A substantial amount of energy in the field of political law is devoted to advising associations on what is a solicitation and how to comply with the prior approval requirements of 2 U.S.C. § 441b(b)(4). That provision requires a trade association to obtain written permission prior to soliciting a corporate member's employees. It further limits to one the number of associations which may be permitted to solicit corporate personnel. Also, a trade association PAC is prohibited from soliciting a corporate member's PAC.

The FEC spends significant resources on difficult policy decisions through the advisory opinions process in determining what is a solicitation, especially in the context of verbal speech at PAC booths at association annual meetings and printed speech in communications in in-house organs and newsletters to members.

In my opinion, the trade association solicitation provisions are a policy in need of significant revision for several reasons. First, the government is put in a position of regulating speech between an association and its members. Such regulation is difficult, if not impossible, for associations to fully comprehend and comply with. Moreover, violations are difficult, if not impossible, to detect. Such restraints may very well conflict with the First Amendment of the Constitution, and with general principles of corporate law.

For example, an association board member owing a fiduciary obligation to oversee the affairs of an association may be precluded from consideration of association PAC activities since his company has not given prior permission. However, the board member could be liable for misfeasance for not being fully informed should the PAC be engaged in questionable activities.

Last, the prior permission requirements lead in effect to an allocation of resources which dilute the actual value of voluntary contributions raised from individuals which are used for the primary purpose of the PAC. PACs exist to influence elections.

The arguments of amassing inordinate amounts of money by trade associations should the prior permission requirements be appealed are contrary to the reality of giving patterns of individuals and to the management policies of many corporations. First, most individuals' allotable resources for politicial or charitable gifts are by necessity limited. Second, most individuals find a closer identity to the corporate PAC over the association PAC. The corporate PAC is the more likely recipient of contributions. Third, many corporations would not subject their employees to numerous solicitations. Many would limit the number of solicitations by association PACs without a legal requirement.

I would support elimination of the annual solicitation approval, permitting approval to stand, until revoked, as a first step towards reducing the burdens of the prior approval requirements.

4. CAMPAIGN FINANCE REGULATIONS SHOULD NOT DIVERT MORE RESOURCES FROM ELECTIONEERING: ATTORNEY AND ACCOUNTING FEES SHOULD BE EXEMPTED FROM CONTRIBUTIONS

The current law creates significant compliance burdens, especially with solicitation and disclosure provisions, for candidates and all types of political committees, which divert considerable resources for directly related campaign activities. But for the law, the need and expanding role for lawyers and accountants would be significantly lessened.

While requiring additional expenditures, the law also controls the ability of candidates and committees to raise money. Payment of legal fees and accounting fees are generally contributions, see 2 U.S.C. § 431(8). Coupled with the limits on contributions candidates unable to secure volunteer attorneys find it difficult to find sufficient resources to retain counsel. Since the attorney is not directly involved in influencing the election (the exception being the offensive lawsuit in a campaign as with ballot access), there is a reluctance to divert resources from electioneering to hire a lawyer.

Since legal and accounting professionals serve to ensure compliance with the Campaign Act, subjecting their compensation to payment only from contributions serves to frustrate self-compliance with the Campaign Act on the whole. Often there is a general reluctance, until a problem develops, to retain counsel. Preventative counseling is difficult, and the job of the lawyer accordingly becomes more difficult.

I recommend all legal/accounting services rendered solely for the purpose of ensuring compliance with the Campaign Act be exempt from the definition of "contribution or expenditure." A positive effect would flow as lawyers would be more available to all candidates, and better self-compliance would follow.

CONCLUSION

Most participants in the political process strive for compliance with the Campaign Act. With the growing body of law and intricate regulation, the role of the lawyer has proportionately increased. A lessening of some of the disclosure requirements with continued FEC vigilance in relation to the non-filer, coupled with increased access to campaign resources, would in my opinion, help increase citizen and group involvement in the process without jeopardizing the political system's integrity.

PREPARED STATEMENT OF PAUL D. KAMENAR, ESQUIRE, WASHINGTON LEGAL FOUNDATION

TAKE THE FEC QUIZ

Question. The Kennedy for President Committee filed a complaint with the Federal Election Commission against Phillips Publishing, Inc., claiming among other things that the publisher and one of its newsletters, *The Pink Sheet on the Left,* should be registered with and report to the FEC as a political committee because two or three *sentences* in a six-page promotional package for the newsletter contains derogatory comments about Senator Kennedy.

The FEC should take which of the following actions:

A. Dismiss the complaint (obviously filed as a desperate attempt by the failing Kennedy campaign) as frivolous, or otherwise not warranting the utilization of the scarce investigative resources of the FEC;

B. Dismiss the complaint because the activity in question is legitimate expression within the ambit of the First Amendment, as well as being statutorily exempt under 2 U.S.C. §431(9)(B)(i) (the press exemption);

C. Launch a full-scale government investigation demanding through subpoenas and federal court litigation the names and addresses of the editorial staff of the publisher, all the bank account numbers of the publishing company, and much more, all at the expense of the taxpayers in the thousands of dollars;

D. None of the above.

Answers: *If you answered "C"*, you are qualified to be an FEC Commissioner;

If you answered "B", you are qualified to be the federal judge who ultimately ruled against the FEC for this outrageous enforcement action;[1]

If you answered "A" or "B", you are qualified to be a reasonable member of the public;

If you answered "D", you are qualified to join a growing number of conservatives, liberals, Democrats, Republicans, independents, and other concerned citizens who believe that the FEC should do nothing, *i.e.*, that the law should be changed, the FEC should be abolished, or at least its enforcement powers transferred back to the Department of Justice.

The foregoing illustration of an actual FEC enforcement proceeding was not designed to make light of the serious nature of these proceedings; in fact, the opposite in intended. That illustration is, unfortunately, all too typical of the kind of cases the FEC decides to prosecute. Invariably, FEC enforcement actions either seriously infringe on first amendment rights of speech or association, or concern themselves with trivial, nitpicking-type matters, leaving that agency open to the charge that it is insensitive to first amendment values and is more of a public nuisance than a public servant.

Minor tinkering or fine-tuning of the law by the Congress will not solve the problems. My experience as an attorney involved in FEC matters for the last 6 years has led me to conclude that fundamental changes would be in the public interest. I was formerly an attorney at the FEC from 1975-76. Since then, I have specialized in this area of the law and have litigated over a dozen cases against the FEC, more than any other attorney in the country. As Director of Litigation for the Washington Legal Foundation, we have litigated several cases against the FEC, including a coalition suit brought by Stewart Mott and National Conservative Political Action Committee (NCPAC) as co-plaintiffs challenging the contribution limits to groups that make independent expenditures. I have testified before committees of the Congress several times on the FEC over the years, addressed conferences and seminars on the FEC, and served as an advisor to President Reagan's Transition Team on the FEC. My testimony will focus on both FEC enforcement matters as well as comment on changes in the substantive provisions of the law.

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[1] *FEC* v. *Phillips Publishing Inc.* (D.C.D.C. No. 81-0079, July 16, 1981). *See also Reader's Digest Association* v. *FEC,* 509 F. Supp. 1210 (S.D.N.Y. 1981). The absurdity of this enforcement action is further highlighted by the other charges levied against Phillips. For example, one of the five charges brought by the FEC against Phillips was that it violated 2 U.S.C. §435(b) (a provision of the law that was repealed by Congress before the Kennedy complaint was even filed). That provision required those political committees soliciting contributions to put the following notice on their literature: "A copy of our report is filed with the FEC and is available for purchase from the FEC, Washington, D.C." The FEC maintained that Phillips violated this repealed provision because he did not have that notice on his promotional material. But of course he did not have that notice on his material. . . . Phillips had no report whatsoever on file with the FEC. In other words, the FEC was faulting Phillips for not stating a lie!

FEC ENFORCEMENT

Congress has given the FEC exceedingly broad powers to investigate and prosecute violations of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). Presumably, the election law reform in the early 1970's was intended to restore confidence in the integrity of the electoral process, but has it?

Oversight hearings on the FEC have been long overdue, and one wonders whether even this hearing today can serve as an adequate forum to consider fully all the ramifications of the Act. At this time I would like to submit for the record the attached article that appeared in the Summer 1980 issue of "World Research Ink" entitled "Federal Regulation of Politics is Good for the Political Process: Pro by Fred Wertheimer of Common Cause, and Con by Paul D. Kamenar."

Should the FEC be allowed to continue to enforce the Act? Let us briefly look at their track record:

FEC v. John Adams

This case is one of the original FEC classics in which the FEC filed suit against old man John Adams, who ran for Congress from New Hampshire and lost, having spent less than a pittance on his campaign. He failed to show up for his court hearing because he reportedly was at an Old Soldiers and Sailors Home. This case is comparable to IRS agents swooping down on guitar players in Lafayette Park for failure to report earned income.

FEC v. Eugene McCarthy

In 1976, Eugene McCarthy ran for President as an independent. His campaign committee booked many of his public appearances on college campuses for which the campaign received honoraria in the $500-$1,000 range. Having been a lead plaintiff with then Senator James Buckley in the landmark case of *Buckley* v. *Valeo*, 424 U.S. 1 (1976), Eugene McCarthy was (and is) an outspoken and eloquent critic of the FEC. Nevertheless, he dutifully filed his FEC reports listing in complete detail the dates he spoke before college audiences, the amounts received, to the penny, including any travel reimbursements, and the address and zip codes of the colleges. Good enough? No!

The FEC charged the McCarthy campaign with reporting violations. The FEC alleged that the detailed disclosure of the source of McCarthy's campaign funds was not meaningful enough. The FEC took the unbelievable position that instead of all the detailed listings on some 30 pages of FEC reports of where he spoke and how much money was received, McCarthy should instead have only *one* line entry, namely, some $30,000 (which represented the aggregate of the honoraria) from McCarthy to himself!

Needless to say, the federal district judge granted summary judgment to McCarthy's campaign and chastised the FEC in open court for bringing this action in the first place.

FEC v. Reagan '76 Committee

The FEC initiated an enforcement action against Ronald Reagan's 1976 campaign committee and eventually filed suit in federal court. The crime? The committee's disclosure reports did not list some of the occupations of the donors, even though the committee had tried in vain to obtain the missing information. By the FEC's own account the percentage of the missing occupations was comparable to the percentage of other Presidential campaigns, including Jimmy Carter, Gerald Ford, and Jerry Brown.

The federal judge had no trouble ruling against the FEC, dismissing the case in open court. It was unnecessary for him to take the case under advisement—the FEC's position was so clearly wrong.

FEC v. CLITRIM

The FEC spotted an outbreak of free speech in New Jersey and New York where tax reform citizen's groups had spent the enormous sum of $135.00 for handbills describing the voting records of incumbents on spending and tax measures.

The FEC spent over $50,000 prosecuting this group, claiming that they come under FEC jurisdiction and must report to the FEC. (That amount does not include the cost to the taxpayers of the thousands of dollars of court time and judicial resources devoted to the case, nor does it include the cost to the defending party.)

The result? The entire panel of the U.S. Court of Appeals for the Second Circuit ruled against the FEC for trying to regulate this traditional exercise of free speech. The Chief Judge of the Second Circuit had some particularly choice words describing the FEC action:

"[T]he insensitivity to First Amendment values displayed by the Federal Election Commission (FEC) in proceeding against these defendants compels me to add a few words about what I perceive to be the disturbing legacy of the Federal Election Campaign Act (FECA), 2 U.S.C. §§ 431, et seq.

* * * * * * *

I find this episode somewhat perverse. It is disturbing because citizens of this nation should not be required to account to this court for engaging in debate of political issues.

* * * * * * *

Our decision today should stand as an admonition to the Commission that, at least in this case, it has failed abysmally to meet this awesome responsibility."

Quoted excerpts from Concurring Opinion of Chief Judge Kaufman of the United States Court of Appeals, Second Circuit, in *Federal Election Commission* v. *Central* Long Island Tax Reform Immediately Committee, 616 F. 2d 45, 53 (en banc decision, 2d Cir. 1980).

The above quoted excerpts from Chief Judge Kaufman's concurring opinion, joined in by Circuit Judge Oakes, presents a strong indictment against the Federal Election Commission's mission and performance. The remaining eight Circuit Judges were not as critical as Chief Judge Kaufman—in dismissing the FEC case, they referred to the FEC's position as "totally meritless." *Id.* at 53.

FEC v. National Right to Work Committee

This massive case brought by the FEC 5 years ago against the National Right to Work Committee (NRWC) is another classic example of the FEC's insensitivity to first amendment values as well as bureaucratic unfairness. The U.S. Court of Appeals for the D.C. Circuit unanimously ruled this summer against the FEC, but not until NRWC had to spend approximately $400,000 in attorneys fees defending itself. The cost to the taxpayers for the FEC lawyers and court time is also well into the six figures.

All the aspects of this suit cannot be properly recounted in a short space, but the following highlights should be noted:

In January, 1976, NRWC requested an advisory opinion from the FEC seeking advice on the permissible scope of soliciting NRWC members and supporters to NRWC's newly created political action committee. Although the law requires the FEC to issue opinions expeditiously, it took the FEC over two years to issue one. Initially a draft opinion prepared by the staff in September 1976 appeared favorable to NRWC. However, the day the opinion was scheduled for Commission consideration at an open meeting, it mysteriously disappeared from the meeting's agenda. According to sworn testimony in the court case by the FEC's own lawyer Commissioner Harris (former ALF-CIO chief lawyer) met privately with the Assistant General Counsel to block this favorable opinion.

A few weeks after this opinion was withdrawn, the National Committee for an Effective Congress filed a complaint with the FEC against NRWC charging that NRWC was illegally soliciting NRWC's own members. With unprecedented speed the FEC staff drafted by the next day a lengthy report recommending prosecution of NRWC. The FEC then refused to issue any Advisory Opinion. The FEC had no definition of the term "members," refused to give any guidance to the NRWC on the subject, and yet pursued a costly compliance action against NRWC for soliciting persons the FEC claimed were non-members of NRWC.

Even though the NRWC believed it violated no law, it was willing to sign a reasonable consent agreement rather than be hamstrung by the FEC. The FEC, however, demanded the NRWC: (1) pay a huge fine, (2) admit guilt, and (3) take all steps necessary to become a membership organization. The Catch-22 was that the FEC refused to tell the NRWC what steps it must take to become a membership organization! Faced with this administrative recalcitrance, NRWC filed a legal action against the FEC. Two months later, the FEC filed a lawsuit against NRWC and sought to compel the NRWC to turn over the names of its 1.25 million members.

After 4 years of costly litigation and thousands of pages of legal pleadings, the U.S. Court of Appeals needed only to issue a short opinion ruling that the FEC was wrong for reading too narrowly the definition of "members." For five years, that included two Presidential election cycles, NRWC and its members were unable to exercise fully their first amendment rights.

Archie Brown v. FEC

Archie Brown filed a complaint in 1977 with the FEC alleging that a local Teamsters union in Dallas, Texas denied him membership because he refused to contribute to the union's political action committee. Brown was taken by the President of the local into the office of the Vice-President of the local and was given a "shakedown."

The FEC "investigated" the case in a manner that raises serious doubts about whether the FEC was interested in stopping union abuse. The FEC took the deposition of one Garland Moore, a union official who witnessed the events, but the FEC attorneys did not ask him a single question about the Brown incident! The FEC also issued a subpoena to take the deposition of the Vice-President of the union, but for some unknown reason, he was never deposed!

After this crack investigation, the General Counsel issued a report finding no violations by the union, either against Archie Brown, or of any widespread violation by union as a whole coercing contributions from the entire membership. The General Counsel report concluded thusly:

"With respect to economic coercion or threat thereof, although by the union officials own admission there has been an almost 100% success rate of DRIVE commitments from those applying for membership at the union hall, it can be argued that the business agents were merely very persuasive, in the absence of any evidence to establish the economic leverage the union might have over an applicant for membership." (GC Report at 9) (Italics added).

The naivete of the author of the above statement is simply incredible.

The Washington Legal Foundation is representing Mr. Brown in court trying to overturn the FEC dismissal of this case. As a further example of the questionable manner in which this case was "investigated," the FEC now informs us that the working file in this case, which WLF tried to obtain under the Freedom of Information Act, *is lost*!

There are many more cases similar to those cited (including *The Pink Sheet* case and *Reader's Digest* cited on pages 1 and 2 of this testimony) which compel one to conclude that the FEC has consistently violated first amendment rights with no prospect that it will get any better—it has only gotten worse.

The enforcement actions that never reach the courtroom are just as egregious as those here. Approximately 90 percent of those cases never reach a court, but nevertheless, the FEC's subpoena power has caused untold damage to the rights of those forced to sign a confession of guilt and to pay a fine.

The FEC constantly complains that if its budget is reduced, then they will have to reduce enforcement. One might conclude that reduced enforcement by the FEC would be in the public interest considering their track record.

Briefly, I would like to turn now to some of the substantive provisions of the law.

CONTRIBUTION LIMITS

In examining the wisdom or necessity of contribution limits, it is *imperative* to analyze those limits in the various categories in which they have been imposed.

Limits to candidates

Currently, individuals may give only $1,000 to a candidate per election; PAC's can give $5,000. As long as there is disclosure, why do we need any contribution limit at all? If the press and the voters know who are the contributors to a campaign and the amounts given, they are in a position to determine for themselves whether the candidate will be beholden to certain interests if he is elected to office. They should decide whether, for example, a $50,000 contribution given by the candidate's spouse or mother is going to influence how the candidate-turned-office-holder will vote on, say, banking legislation.

Limits to noncandidate committees

There is absolutely no compelling governmental interest in limiting contributions to non-candidate committees. These committees do not run for nor are elected to office. Especially if the amount of contributions they give to candidates is limited, there is no purpose to limit the amount those committees receive.

How is the electoral process corrupted if a donor gave a large amount of money to, say, NCPAC or NCEC? If they are limited in the amounts they can give to candidates, these extra limits are unnecessary and infringe on first amendment principles without any overriding justification.

Annual limits

Individuals are currently limited annually to giving $25,000 to all candidates and non-candidates committees. Yet PAC's have no annual limit. Shouldn't individuals (who are the voters) have *more* rights than non-voting PAC's?

There is no compelling governmental interest in limiting annual contributions.

If there is no corrupting influence now by a donor giving $1,000 to candidate No. 1, how is there any corruption by giving $1,000 to candidate No. 26? Again, tinkering with this provision by raising the limit from $25,000 to $50,000 is meaningless. The annual limit serves no purposes other than to give the FEC another regulatory weapon in their enforcement arsenal.

Limits on corporate and union contributions

Currently, the limits set for corporate and union contributions is $0. Common Cause had decried the proliferation of corporate PAC's, which were permitted because they could not contribute directly. Perhaps if the corporation were treated as an individual and allowed limited contributions, one could argue that the money involved would not be so large as to have any corrupting effect.

If, however, the prohibition is kept, there should be no restrictions whatsoever on who can be solicited to a PAC. Again, the government does not have any business telling political commitees who they can communicate with.

Why should I not be allowed to receive in the mail a solicitation from the AFL-CIO's COPE or from SUN-PAC? If I am not interested, I can simply throw the literature in the waste basket. Indeed, such restrictions seriously infringe on first amendment values. *See Schaumburg v. Citizens for a Better Environment,* 444 U.S. 620 (1980); *Consolidated Edison Co. v. Public Service Comm'n,* 447 U.S. 530 (1980).

Furthermore, corporations should be permitted to make independent expenditures. If they have the right to discuss political *issues,* which no one doubts, it is an artificial distinction to prohibit the mentioning of a candidate, who, in many cases, *is the issue. First National Bank of Boston v. Bellotti,* 435 U.S. 765 (1978).

CONCLUSION

The areas of the FEC law covered above was not intended to be an exhaustive review of the law, but are highlights that need to be further explored. The Congress has the responsibility to ensure that the first amendment is not suffocated but is given ample breathing space. Accordingly, minor tinkering is not what is called for. There are fundamental structural defects that need correcting.

Thank you for the invitation to testify before the Senate Rules Committee on this crucial topic.

The CHAIRMAN. The President of the League of Women Voters, Ruth Hinerfeld, was hoping to be here this afternoon, but was prevented from doing so. So, without objection, her statement will be included in the record.

[The prepared statement of Ruth J. Hinerfeld follows:]

PREPARED STATEMENT OF RUTH J. HINERFELD, PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

Mr. Chairman, members of the Committee, I am Ruth J. Hinerfeld, President of the League of Women Voters of the United States, a citizen's organization of 1,400 state and local Leagues in the 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. Much of the League's sixty year history as a citizen's organization has been spent pursuing the goals of an open and equitable election system. Our objectives in coming before you today is to relate the discussion about the Federal Election Campaign Act (FECA) to the issues which caused the League to lend its support to the 1974 and 1976 amendments to the act.

As you know, the League of Women Voters does not jump on the bandwagon of every passing issue. League positions are based first on exhaustive study of a problem by our entire membership and second, on a consensus process for securing member agreement on solutions to these problems.

Our support for an independent fully funded Federal Election Commission (FEC) and our other positions on federal election issues is derived from our 1973 study of the federal campaign finance system. League members were concerned about secrecy in funding and the influence of special interests on campaigns, escalating campaign costs and financial barriers to access in the political arena, especially as they affected women and minority candidates. Our membership wanted a system of campaign finance that would open up the funding of campaigns to public scrutiny, enable all candidates to compete more equitably, limit the influence of wealth and special interests and encourage active and broad citizen participation in elections. In pursuit of these objectives, we supported the 1974 amendments to the FECA, intervened for the defendants in Buckley v. Valeo and lobbied for the enactment of the

1976 amendments to the act that would bring it into compliance with the Supreme Court decision in *Buckley*.

Certainly League members were affected in thinking about these issues by the Watergate scandals. But we were also concerned about the long history of abuses that reinforce the notion that behind every governmental decision there stands a phalanx of special interests. We are still concerned that recent scandals have made the American public believe that politics is a dirty business. We are also concerned about a declining rate of voter participation. In the 1980 election, only 53.9% of Americans eligible to vote went to the polls to cast their ballots. This figure, which continues a 20-year decline in American voter turnout, is the lowest voter turnout rate for any Western democracy, with the exception of Switzerland. The League believes that the Congress can only reinforce the negative attitudes which many have toward the election system and voter apathy if it pulls back from the tough reforms it enacted in 1974 and 1976.

I want to make some specific statements about provisions of the FECA that the League believes are essential to maintain the voters' faith in the integrity of the federal campaign finance system.

The League believes that full disclosure of contributions prior to elections and of expenditures by a strict deadline are absolutely essential to the public's right to know. Campaign records must be submitted in enough detail to provide the public with a complete and accurate report of what comes in and what goes out of a campaign. These reports must be made available in a timely manner and they must be easily accessible to the public.

Because of our commitment to full disclosure, the League questions the wisdom of raising the threshold of contributions to be disclosed from $200 to $500. Whatever burden there is for a campaign committee, political action committee or unaffiliated committee to disclose a contribution of $200 is easily balanced by the right of citizens to basic information about who is financing campaigns. We do not accept the argument that listing donors for FEC records is a burden. A campaign wouldn't be much of a campaign if it didn't keep lists of contributors—even $10 donors—for future use. We all know that these lists are kept by committees and even sold to raise funds for other campaigns.

We are not the first to point out that voters do benefit when candidates publicly list who has donated to their campaigns. While we agree with those of you who observe that most voters don't bother to check who has contributed, we believe the knowledge that the information exists is sufficient to give voters greater confidence in the election process. If the Congress withdraws its commitment to full disclosure, it risks the appearance of wanting to hide the facts.

Requirements for full disclosure alone are in themselves not sufficient to guarantee that full accounting of campaign finance be made available to the public. An additional element is necessary to make disclosure meaningful: an independent, fully funded FEC with investigatory, subpoena and primary civil and criminal enforcement powers. Disclosure requirements are meaningless without a single independent body to monitor the reporting. There are some who would bring back the 1971 act which established three separate offices—the Secretary of the Senate, the Clerk of the House and the General Accounting Office—with responsibility for monitoring disclosure reports, and for referring suspected violations of the reporting requirements to the Justice Department for action. We remember the difficulties that these three offices had in monitoring reporting. We remember the concern our members expressed over the potential conflict of interest in having the administrative offices of the two houses of Congress responsible for monitoring congressional reports. We also recall a *Washington Post* editorial in 1972 which spoke of "the frustrations which the GAO met in its valiant efforts to monitor the 1972 presidential campaign without subpoena power or the authority to do more than refer complains to the Justice Department." We remember that in 1972 it was the Senate Republican Minority Leader Hugh Scott who took the lead in pressing for an independent commission with authority to subpoena records and to prosecute for violations. Senator Scott called the independent commission the "most important feature of any campaign reform package." It is our experience that a law has no effect until it has the full force of the law behind it. That force, in this case, is a fully funded FEC with complete enforcement powers.

In addition to disclosure and the continued existence of a FEC with power to enforce the requirements of the act, the League also believes that the elections process is best served by limits on contributions and expenditures. We continue to believe that large contributions from individuals undermine the democratic concept of one person one vote whether or not the big giver is actually an influence seeker. We believe limits lessen the impact of special interests and thereby maintain public confidence in the electoral system. It would come as no surprise to anyone therefore, that the League supports limitation on PAC giving to candidates.

All this is not to say that the League does not recognize substantial room for technical adjustments in the law and for improvement in the Commission's administration of that law. We support increases of individual contribution limits to candidates. We also support lifting the aggregate contribution limits for individuals. We believe that the act is improved by eliminating the separate contribution limits for primary and general elections. And we support legislation which brings draft committees under the same rules as announced candidates.

The League also supports improvements in FEC processes that would allow for more efficient administration of reports. However, we are aware that the Commission, like most other agencies, is faced with the prospect of across-the-board budget cuts. We do not believe these cuts—which would go far beyond any administrative savings and in fact would cut into the Commission's ability to administer the law—are in the public's interest. We believe that American voters could very well interpret this cutback in the FEC's capability as a cutback in the commitment to clean up the election system. We are reluctant, therefore, to place unreasonable requirements on the Commission at a time when its capabilities may be reduced.

The CHAIRMAN. We also have requests from several other individuals and groups for submission of statements, and the Chair will consider the inclusion of those in the record. But I would request that any statement that you wish to have included in the record be submitted by Tuesday, the 24th of November.

The committee will stand adjourned until 9:30 on Tuesday, the 24th.

[Whereupon, at 3:53 p.m., the committee was adjourned, to reconvene at 9:30 a.m., Tuesday, November 24, 1981.]

APPLICATION AND ADMINISTRATION OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS AMENDED

TUESDAY, NOVEMBER 24, 1981

U.S. SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The committee met, pursuant to call, at 9:40 a.m., in room 301 of the Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman) presiding.

Present: Senators Mathias, Warner, Ford, and Cannon.

Staff present: Joseph E. diGenova, staff director and chief counsel; William M. Cochrane, minority staff director; Gerald W. Siegel, minority chief counsel; John K. Swearingen, director, technical services; Jack L. Sapp, professional staff member; Ann B. Cook, chief clerk; Peggy Parrish, professional staff member (minority); Elaine Milliken, counsel (elections); Harriet Robnett, counsel (elections); John Sousa, minority counsel (elections).

The CHAIRMAN. The committee will come to order. We are continuing our review of the application and administration of the Federal Election Campaign Act of 1971. We will appreciate the comments of witnesses not only on the operation of the act but on any amendments that they feel are desirable.

There are three bills pending before this committee—S. 1550 by Senator Helms, S. 1766 by Senator Cranston—both of whom will be here today—and S. 1851, a measure which I introduced, very frankly, as a vehicle for discussion of a number of ideas proposed by a number of different people.

As we noted Friday, the committee is attempting at this stage to focus primarily on those provisions of the law which apply to congressional campaigns. A more comprehensive examination of the laws governing Presidential campaign finance will be done early in the next session.

These hearings are intended to provide a framework for an orderly and reasoned consideration of the effect which the Campaign Act has had on campaigning for Federal office and of the ways in which it has fulfilled or failed to fulfill its original purposes.

The committee invites the comments of witnesses on all aspects of the law, including disclosure, contribution limits, independent expenditures, and enforcement procedures.

I am happy to welcome the distinguished senior Senator from California and minority whip of the U.S. Senate, Mr. Cranston.

STATEMENT OF HON. ALAN CRANSTON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator **Cranston**. Thank you very much, Mac—good morning to you and Wendell. I am delighted to have this opportunity to appear today to discuss the Federal Election Commission and several of the issues related to the Commission and to the current Federal elections law.

My statement will first discuss my own proposal, S. 1766, relating to a candidate's expenditure of personal funds in his campaign. In the second part, I will address several other matters which have been brought to the committee's attention: the need for a Federal Election Commission, the adequacy of current contribution limits, and the impact of independent expenditures on our elections process.

When Congress designed the Federal Election Campaign Act in 1974, it provided a fair and balanced package of limitations on political contributions and campaign spending. Under this package, limits were placed on what a candidate could spend for his own campaign: $50,000 for Presidential candidates, $35,000 for senatorial candidates, and $25,000 for candidates for the House.

By its *Buckley* v. *Valeo* decision of January 1976, the Supreme Court set this balance of equities awry when it declared the spending limits set by the act, including the personal contribution limits, to be unconstitutional. Thus, a candidate for the Senate or House must abide by the $1,000 individual and the $5,000 PAC contribution limits but can make unlimited contributions to his or her own campaign.

As a result, the personally wealthy candidate gained an enormous advantage. Today millions of dollars can be, and are, legally poured into the campaigns of rich candidates by the candidates themselves. In the 1980 Senate races alone, FEC records show that 21 candidates put between $100,000 and $500,000 of personal funds into their own campaigns and another 5 candidates put over $500,000 personal funds into their races. Their opponents, on the other hand, had to concentrate on the hard necessities of fundraisers, phone calls, and private meetings, devoting much of their limited time to the slow, laborious building of their campaign treasuries while their rich opponents were out campaigning.

Because of limits on political contributions, the candidate of average means seldom if ever raises as much money in his campaign as his rich opponent spends on his. The whole psychology of the campaign thus favors the rich candidate. He or she can always spend more during the final weeks and days if necessary. The money is there. The average candidate doesn't have the wherewithal to make that extra effort and both he and his opponent know it.

We all know this situation is very unfair. It violates the basic American creed that every citizen should have an equal chance at election to Congress based on merit, character, and the ability to legislate in the people's best interest. Under the present circumstances, all candidates do not have that fair and equal chance.

There is probably no way to correct completely the advantage the wealthy have in campaign spending. But we could remedy some of the inequity by a partial return to the system that existed before the 1974 law was adopted, when there were no limits on either contributions or spending.

Specifically, I am proposing that if a candidate spends more than a specified amount of his personal funds on his campaign, that act will trigger the lifting of contribution limits on his opponent or opponents. This would remove the advantage that the 1974 law, as revised by the *Buckley* v. *Valeo* decision, gives to the wealthy candidate.

Here is how my bill would work:

A candidate would be required to advise the Federal Election Commission of his plans to use his personal funds or the funds of his immediate family under the following circumstances:

First, on the date a candidate qualifies for an election or 90 days before an election, whichever is earlier, he must file with the FEC a declaration that he intends to spend no more than $35,000 of his personal funds or his immediate family's on his campaign.

Second, if he subsequently changes his mind, he must so notify the FEC at least 60 days prior to the election.

Third, a candidate must notify the FEC and each opposing candidate within 48 hours after he actually spends more than $35,000 of his or his immediate family's funds.

If a candidate gives notice at any of these times that he will exceed the $35,000 figure, the limits on individual and multicandidate political committee contributions to his opponent would be waived by the FEC. Moreover, should a candidate fail to file any of the above declarations, the Commission would also waive the limits.

Under my proposal, the Commission could initiate its own investigation to determine whether any candidate has spent more than $35,000. If that investigation showed that expenditures have exceeded $35,000, the Commission would again waive the contribution limits.

If a waiver has been granted to a candidate, an individual's contributions to that particular candidate would not be counted against the individual's yearly $25,000 contribution limit.

I do not agree with those who argue that the Federal Election Commission should be abolished and its functions either abandoned or transferred to other agencies. Having decided that we will limit Federal campaign contributions and require disclosure of campaign income and expenditures, we perforce have created a regulating agency to understand and interpret the law, to oversee compliance, and to enforce the law. The complaints some of us may have about the way the FEC has carried out its functions do not obviate the need for the agency. Perhaps the FEC could have made wiser decisions; perhaps inadequacies with the law itself have led to problems for which the FEC has taken the blame. But there's no way we can maintain equitable and nonpartisan enforcement of such a politically sensitive law without a separate agency set up solely for this purpose.

Two areas where I believe we need changes in the law are the contribution limits and the permissible independent expenditures.

Obviously, inflation has eroded the real dollar value of the contribution limits since 1974 when they were established. Since there's no similar limit on total expenditures, thanks to the Supreme Court, the costs of campaigning keep rising while the value of the maximum allowed contribution keeps shrinking. This makes it harder and harder for a candidate, particularly in a large State, to have time to do anything but raise funds. To raise my $3 million campaign fund in 1980, I averaged a fundraiser every 2½ days, every 60 hours, for 2 straight years. The demands of such a strenuous fundraising schedule substantially decreased the amount of time I was able to spend meeting with, talking with, and listening to people who are not prospective contributors, and reduced my ability to do many other things we normally associate with a political campaign in a democratic society.

I believe individual contribution limits should be raised above the $1,000 level, perhaps to $3,000 or $4,000. Since I believe there was too much disparity between individual and PAC contribution limits in the original law, I do not at this time favor increasing PAC contribution limits.

Second, I believe we should reconsider the $25,000 annual aggregate individual contribution limit. I am not sure we need an aggregate limit on what individuals can give, particularly since there's no comparable limit on what PAC's can give. But if we are to continue an aggregate individual contribution limit, I believe it should include only contributions to individual candidates and to PAC's; it should not cover contributions to party organizations. Currently, the law permits an individual to contribute annually $20,000 to the national party committee, $20,000 to the House campaign committee, and $20,000 to the Senate campaign committee of the party of the individual's choice. The $25,000 aggregate limit forces these organizations to compete with each other and with their own candidates for contributions. I fail to see what good purpose is served by this aspect of the law. Thus, I propose that contributions to the national and congressional party committees be excluded from the aggregate annual individual contribution limits.

I wish I were certain of a good answer to the problem of independent political campaigning. I am not. When a candidate, forced to abide by contribution limits, faces an opponent whose campaign is benefiting substantially from the unlimited expenditures of a so-called independent expenditure group like NCPAC, that candidate has every right to feel the law is not treating him equitably. I have worked with other Senators to develop some ideas which have been presented to the committee by Senator Inouye. But I am not sure any of them will remedy the inequities or that anything short of repealing the contribution limits will be adequate. Yet I am not ready to support repealing contribution limits.

One thought that I have had is that we apply the same approach that I suggested we apply to the candidate confronted by a wealthy candidate with unlimited access to his own funds for the campaign to a candidate confronted by an independent expenditure operation against him. If NCPAC or any other independent expenditure organization takes on a candidate and if $35,000 is spent against that candidate, the contribution limits on the candidate subjected to the assault by the independent campaign committee would be waived. It would enable the candidate to raise additional funds for defense purposes against the assault of the independent committee. It would give him an opportunity to raise those funds from those who might be outraged by the nature of the attacks upon him.

Whatever solutions the committee may find feasible, I hope any proposed increases in contribution limits will be accompanied by proposals to tighten the law governing independent expenditures. Linkage of the two is the best way to assure political success for both.

Thank you very much.

The CHAIRMAN. Thank you, Senator Cranston. I want to congratulate you on your ingenuity in finding a way around the rule of the Supreme Court in *Buckley* v. *Valeo.* I had the honor, if you can call it an honor, to have been overruled by the Supreme Court in that case on this very point, of limitations on expenditures from personal funds, because it was my amendment which imposed the limit on candidates making expenditures from their personal funds in connection with their own campaigns.

And I was very much disappointed when the Supreme Court did not uphold that provision because it seemed to me, while I fully understand the first amendment argument which the Court finally came down on, that there was the equally compelling argument that Congress had the constitutional power and responsibility to provide for the regulation of elections, and that the Court might well have upheld the limitation on this ground.

But I think you have made a very interesting and ingenious suggestion which does not involve the first amendment and which is clearly within the provision for regulation of elections, so that it may well pass muster.

I do have just a question for clarification.

Would this apply only in general elections?

Senator CRANSTON. I have not thought that through; I am not sure that it should apply only in general elections.

The CHAIRMAN. There is just one area that I think would require some interpretation. Let us say that you were in a Democratic primary in California, and you had a very wealthy opponent who was prepared to untie his purse strings and go the limit, but that in the Republican primary there was no such situation arising. Now, would the limits come off in the Republican primary although they in fact were not at that moment challenged by your wealthy opponent?

On the other hand, you have to consider that a general election is very often just an extension of a primary, and if your wealthy opponent spends an unlimited amount in the Democratic primary, he is gaining certain values in terms of name identification and issue orientation which will spill over into the general, so you could make an argument that all the limits ought to be off, even at that early stage.

Senator CRANSTON. Well, I would think it should certainly come off in the primary where the challenge occurs; I am not sure whether it should come off in both. If I was in a situation where a lot of money was being spent in a primary of another party but I had no challenge in my own primary, I wouldn't choose to spend a lot of money in my primary. I would save it for the general election.

Senator **Ford**. May I inject a question here? If the fellow who spends a large amount of personal funds and triggers the endeavor, loses; then you have the limits off on one side but for a loser rather than a winner. Weren't you anticipating in your question, Mr. Chairman, that the candidate who spent the money would be the winner?

The **Chairman**. I never anticipate that Mr. Cranston is going to be the loser. [Laughter.]

Senator **Ford**. I agree with that. This endeavor, in my mind, creates a problem when the limits are endeavored for the opposite party regardless of which one wins the primary.

The **Chairman**. That actually was the situation in New York several years ago when Dick Ottinger ran and I think put up, what, about $4 million of his own money—some millions of his own money.

Senator **Ford**. I thought that had been for a congressional seat.

Senator **Cranston**. It was for the Senate seat.

The **Chairman**. Yes, it was for the Senate seat.

Senator **Cranston**. If the well-to-do candidate lost in the primary, there would be no waiving of limits in the general election.

The **Chairman**. I think that would be clear. Well, these are some of the fine points that I think we need to think about. But, on the other hand, things such as name identification have a concrete market value, and you know what it costs you to improve your name identification. These are subject now to some fairly scientific determination. And if you gain those in a primary, it seems to me that they have a market value which you carry over into the general election. And that is something that we will have to think about a little bit. And your further musing on it over the next few days of leisure and contemplation might give you some further insight, and we would be glad to have a further word from you.

Senator **Cranston**. I will be glad to, because you have raised an issue that I hadn't given any thought to.

The **Chairman**. Senator Ford?

Senator **Ford**. Senator Cranston, does your proposal consider that borrowed money would be a personal contribution?

Senator **Cranston**. I think there would be a way to cover that by taking account of the fact that in order to borrow funds you have to put up collateral and if the candidate puts up $35,000 collateral that would then trigger the same sequence of events. That would be, in effect, an expenditure of personal funds and the opponent would then have the limits waived on his ability to raise funds.

Senator **Ford**. Would it be opponent or opponents, under your——

Senator **Cranston**. Opponents—plural.

Senator **Ford**. So if I borrow $35,000 and put that into my campaign, and had two or three opponents, then that would trigger the waiver—take the cap off—and they could do the same thing.

Senator **Cranston**. Right. A wealthy candidate could try to get around triggering the waiving of the limits for his opponents by borrowing money rather than by spending his own money. But if he has personally put up the collateral for the loan, he triggers the waiver.

Senator FORD. I understood from your statement that you would not favor the abolishment of the Federal Election Commission. What effect do you believe a proposal to abolish the Federal Election Commission and, as some suggest, assign its functions to the GAO or the House and Senate officers and the Justice Department would have on the public's confidence in the Federal election process?

Senator CRANSTON. I think we need a body that will focus on this particular area fairly and adequately. GAO might conceivably be able to do it, but it has a lot of other responsibilities. I would not favor the House and Senate doing it, because then we are policing ourselves. I think people would not have confidence in the fairness of the application of the law by ourselves to ourselves. I would not favor having the Department of Justice doing it, because that seems to imply a criminal offense when there is just an investigation of an alleged civil offense. I think that it might cause people to file complaints constantly and then to say that the Department of Justice was investigating their opponent. That would be a very unfortunate situation.

Senator FORD. I thank the Senator. I have no more questions.

The CHAIRMAN. I have just one brief point, going back to this question of the effect of the primary. We made a very rough check in anticipation of your testimony, and it looks as though all contribution limits would have been off in 20 States in the 1980 senatorial election; all contribution limits would have been off—this surprises me—in 15 States in the general election, which, considering that roughly 33 seats were up for grabs, it means half the Senate seats would be affected by this provision. Now, I think it lends some force to your proposal, that half of the candidates for the Senate are willing to put up more than the average contribution in order to run for the Senate.

Now, do you think, if this provision were adopted, it would tend to discourage candidates from spending large amounts of personal funds?

Senator CRANSTON. I would think it would have an impact to some extent, although I am not certain whether it would have that consequence. What I am certain of is it would have the consequence of creating greater equity for those candidates who do not have large personal resources that they are willing to expend.

The CHAIRMAN. One other question. You recommended that contributions by individuals to national and congressional party committees be excluded from the aggregate annual contribution limit, which is currently $25,000.

Now, last week, when the chairman of the Republican National Committee, Richard Richards, was here, he suggested that the limits be taken off the amount that parties can spend on behalf of candidates. He felt that would have the effect of increasing the influence of the parties, of strengthening the party structure.

I suggested to him that it would probably have that effect, but that you might get a certain degree of overkill; whereas he would like to see the party chairman be the boss, he might end up as the czar.

Now, your recommendation goes to the giving end of the situation, not to the spending, but to the giving. So let me ask you whether your recommendation for removing party committee contributions from the contribution limit would offer the opportunity for parties to be captured by the fat cats, to go back to situations that we had before the enactment of the current law where you had fat cats making multimillion-dollar contributions.

Senator CRANSTON. Well, perhaps there should be some very high upper limit to prevent $1 million contributions, but I do feel that there should be a change at least in the present situation which causes an unfortunate competition between the different elements of the party and between the party instruments and candidates. I do feel we should take steps to strengthen the parties. I think the parties are not strong enough now in the day of television and the decline of voluntarism and precinct work, and so forth.

I am not sure about the question raised by the Republican chairman. I think we should consider that, but I would favor placing some kind of a limit, but a higher limit.

The CHAIRMAN. Senator Cannon.

Senator CANNON. What is the reason—if you have gone over this, just say so, and I will check the record—but your requirement that a candidate declare at least 90 days before an election if he is going to make expenditures from personal family funds of more than $35,000. I am thinking in terms of the fact that a candidate may not know that, he may not know till very close to the election that he has run out of money and he has got to come up with additional funds.

Senator CRANSTON. Well, we wanted to get a sign to the opponent, and I guess it should really state that he will indicate whether he plans to or doesn't plan to. If he genuinely doesn't know, he will say he doesn't plan to now. It doesn't mean he can't change his mind—but when he changes his mind he has to notify the FEC so that his opponent has an opportunity to start raising funds without being subjected to the limit.

The objective is to get notice to the nonrich opponent of the intentions and then the actions of the rich opponent.

Senator CANNON. But you are saying then that the person who is the opponent would have an unlimited, then—no limit on what the contributions could be made to his candidacy.

Senator CRANSTON. Yes; suppose that you have a very rich opponent; he can spend $1 million, $2 million, or $3 million on his campaign and get it all from one source and spend all his time campaigning. You are at a great disadvantage if you just have to scramble around looking for $1,000 contributions.

If you have that kind of an opponent, you should not have that limit on your contributors. You should be able to get people to give you larger amounts so you can compete with the rich opponent and have more time to spend campaigning to match the time he can put into campaigning.

Senator CANNON. Well, then, would you take the limit completely off?

Senator CRANSTON. Yes, I would take the limits off what individuals can contribute to you. Otherwise the nonrich candidate is at an obvious disadvantage when facing a rich candidate.

Senator CANNON. Was this in your proposal or only in Senator Mathias'—to increase the individual contribution limit now?

Senator **Cranston**. I propose to increase the individual contribution limit.

The **Chairman**. Both of us do.

Senator **Cranston**. Yes, we both propose that.

Senator **Cannon**. From $1,000 to $4,000?

Senator **Cranston**. From $3,000 or $4,000, something like that.

The **Chairman**. We are in the same ball park on that.

Senator **Cannon**. I may say that I support you both on that concept. That $1,000 limit certainly makes it very restrictive, as you point out—the time that you had to spend in fundraisers; what was it, one every 60 hours, a fundraiser every 60 hours?

Senator **Cranston**. Yes, for 2 years. Senator Bentsen is going through that now, and I suspect Senator Moynihan is also going through that now.

The **Chairman**. The most demeaning part of the whole political process.

Senator **Cannon**. Thank you.

Senator **Cranston**. It's unfair both to the candidate and to the electorate, because it causes the candidate to focus on one segment of the electorate to the disadvantage of the citizens who aren't prospective contributors to have an opportunity to meet with and to express their views to the candidate.

The **Chairman**. I don't want to interrupt Senator Cannon, but on this point I wish Hubert Humphrey were here—I wish Hubert Humphrey were here for many reasons. But he was particularly eloquent in describing the scene in which a political fundraiser took place, in which the candidate stood out in front of the curtain and shook hands and smiled and made small talk, pretending that he didn't know what was going on behind the curtain in the same room.

Senator **Ford**. May I ask one question? I think it's important that we get this in the record, Alan.

To me $35,000 seems to be a low figure. An individual doesn't necessarily have to be rich in order to raise $35,000, with a second mortgage on his home or other collateral. It seems like that figure might be just a little bit low. I would like us to think about that one some more.

What we have been talking about here is a candidate with unlimited financial resources, personal resources, who triggers the waiver and lifts those limits.

But who doesn't get a benefit from the waiving of the limits? The fellow who just couldn't raise the money, becomes a noncandidate for all practical purposes, doesn't he?

Senator **Cranston**. Yes; I am not wedded to that $35,000 figure at all. If it is too low, it should be raised. The 1974 law did have a $35,000 figure. Inflation has occurred since then, maybe a higher figure is——

Senator **Ford**. I thought that was where you got the figure. But I was thinking that maybe that might not be quite high enough, when you find that governors put millions of dollars into gubernatorial campaigns, and Senators put, as you said, over $500,000 into a campaign.

Senator **Cranston**. Yes, I think you are probably right: that figure should be higher.

The CHAIRMAN. I could reconstruct for you, because I remember when we calculated that figure at the time, and made 25 for a Congressional candidate, 35 for a senatorial candidate, and 50 for a Presidential or Vice Presidential candidate. I must say I think those figures were more or less drawn from the air.

But when the Senator from Kentucky says you don't have to be rich to raise $35,000 to put into your campaign, it just demonstrates the wide gulf between the economy of the wealthy State of Kentucky and the poor but struggling State of Maryland, where such a figure would be awesome.

Senator FORD. I might say to my distinguished and beloved chairman, that we only have one slight advantage over Maryland; we have beautiful women, fast horses, bourbon, and cigarettes; the advantage is, they are all habit-forming. [Laughter.]

The CHAIRMAN. I will reserve my response to a later point, because I see the Senator from Iowa is waiting.

Senator FORD. And that will give me additional time to think also, Mr. Chairman. [Laughter.]

Senator CRANSTON. Thank you very much.

The CHAIRMAN. Thank you.

Senator FORD. Thank you, Alan.

Senator CRANSTON. Legislate wisely, please.

Senator FORD. Oh, you will get a shot at it regardless of what we do. Legislate wisely and quickly.

The CHAIRMAN. We now have the great pleasure of welcoming the Senator from Iowa, Mr. Jepsen, who on this subject I think could be described as indefatigable, as he proved at 4 o'clock in the morning last week.

STATEMENT OF HON. ROGER W. JEPSEN, SENATOR FROM THE STATE OF IOWA

Senator JEPSEN. Mr. Chairman, I would like to introduce Bill Finerfrock on my left, who is my staff member who has spent many hours in research and becoming the staff expert, and also Mr. Tom Wasinger, attorney, and my administrative assistant who has worked on campaigns actually filing reports, and Mr. Trip Howell, who has also worked on campaigns with the special responsibility of working with the accounting agency and filing the reports, and would ask your permission to counsel with them as need be, from time to time.

The CHAIRMAN. Certainly.

Senator JEPSEN. Mr. Chairman, I appreciate this opportunity to appear before the Senate Rules Committee to discuss the need for reforming our Federal election laws. I have spoken with both the distinguished chairman of this committee, as well as the ranking minority member, about this issue before, and I look forward to the possibility of doing so again.

Mr. Chairman, I am particularly appreciative of your leadership on this issue, and the fact that you have introduced legislation around which we can focus our attention. I had hoped to submit legislation of my own prior to this hearing, but unfortunately the press of the legislative schedule has prevented this. I still do plan to introduce legislation, and I would hope that my proposal would be submitted some time the next few weeks.

For this reason, Mr. Chairman, my testimony today will focus on your bill along with recommendations that I had previously submitted to the Senate task force on election reform. Before this review, however, I would like to take a moment to outline the philosophical reasons behind my views.

The Supreme Court, in ruling on the various provisions of the 1974 Federal Election Campaign Act Amendments, stated that the legitimate public interest is the elimination of the appearance and reality of corrupting influences. In achieving this goal, the Court goes on to state that public disclosure of contributions by individuals and by entities, particularly corporations and labor unions, is an effective means of revealing the type of political support that is sometimes coupled with expectations of special favors or rewards. I wholeheartedly agree with this conclusion.

However, in its zeal to take this judicial decision and put it into law, Congress should have asked the question: Will this new law be so overly broad so as to severely limit, even infringe upon the constitutionally guaranteed rights of free speech and association? More importantly, can this goal, given these restraints, be achieved?

I believe it can, but some fundamental changes must be enacted because the 95th Congress, in addressing the Court's decision, did not answer these questions.

It is my opinion that the present law neither satisfies the public's need to know nor the need to protect the constitutionally guaranteed rights of speech and association. In essence, we have the worst of both worlds instead of the best.

Clearly, the present law provides for disclosure. But in an effort to get at the corrupting or potentially corrupting types of influences, the law mandated the disclosure of most contributions and expenditures. As one of the witnesses stated at the first hearing, what we need is less information, but also more vital information being disclosed.

Current law requests so much information, information that is nonessential to this whole process, that we have ended up confusing not only the provider of the information but also the people who are supposed to be reading it as well. This shotgun approach to disclosure will only serve to hurt the American political process.

In this regard, Mr. Chairman, I wholeheartedly endorse your proposal to raise the reporting threshold for contributions and expenditures. As you know, this was one of the recommendations I made to the task force and it is one of the changes I have included in my bill. Such a change would still comply with our original goals, and yet protect the constitutional concerns I previously mentioned.

Disclosure is probably the least controversial part of the law. I find very little disagreement with the belief that regardless of what changes are made, disclosure should at least be retained. I look forward to working with the distinguished chairman to see that this remains so.

But if disclosure is the least controversial aspect of the law, then enforcement most certainly must be the most controversial. I have been rather outspoken in my views of the Commission and the way it has enforced the law and, as you know, I have called for the Commission's abolishment. If I believed, as you do, Mr. Chairman, that the Commission was needed to enforce the law, I would find some of your recommended changes very acceptable. But I do not believe the Commission is needed and therefore do not feel your changes go far enough.

Earlier this year, I recommended the abolishment of the Federal Election Commission. Disclosure would be transferred to the Office of Federal Elections and enforcement would be transferred to the Justice Department. As you will recall, this is essentially the structure established when Congress enacted the original Federal Election Campaign Act of 1971.

I believe the 1971 law was a good law, and, given a chance, could have adequately served the purposes as defined by the Supreme Court. More importantly, it could have done so without imposing the substantial burdens found under the current law.

For some reason, Mr. Chairman, many people cannot draw a distinction between the Federal Election Commission and the Federal election law. I seek the abolishment of the Commission, not the law.

Individuals who argue that we need the Commission cite the need for an independent agency to enforce the law. This argument has two major fallacies: First, it assumes that you can create an independent commission to oversee election laws; and, second, that the law will go unenforced unless the agency is there to enforce it.

Concerning the first question, anyone who has followed the activities of the Commission knows that it is anything but independent. Ask Eugene McCarthy, whose independent Presidential campaign suffered immeasurable damage as a result of the purely political nature of the Commission. Ask the National Right to Work Committee, which was effectively prevented from participating in two consecutive election cycles because of the political nature of the Commission. And, finally, ask any number of candidates for political office who have had to suffer because of the arbitrary enforcement proceedings brought by the Commission.

Along these lines, Mr. Chairman, I would like to point out a situation which recently came to my attention which shows this lack of "independent" thinking.

On May 1, 1981, the Land O' Lakes cooperative requested an advisory opinion from the Federal Election Commission with regard to who the cooperative's PAC could solicit for donations. Specifically, Land O' Lakes Political Action Committee wanted to solicit contributions from individuals who were members of associational members of Land O' Lakes.

Land O' Lakes essentially has two types of membership: Class A common stock held by associations of agriculture producers operating as cooperatives; and class B stock held by individuals who are actively engaged in the production of agricultural commodities.

The FEC ruled that the Land O' Lakes PAC could solicit class B individuals, but not class A. In justifying this action, the Commission cited its own regulations, which state "member" means:

> All persons who are currently satisfying the requirements for membership in a membership organization . . . cooperative, corporation without capital stock, and, in

> the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization.

Reading this section alone would cause one to question the Commission's ruling. But upon reading the regulation even further, the decision becomes even more confusing. The regulation goes on to state:

> Members of a local union are considered to be members of any national or international union which the local union is a part and of any federation with which the local, national or international union is affiliated.

What this means, Mr. Chairman, is that if an individual joins the local union, he can be solicited by the national office's PAC, the international office's PAC, as well as any organization with which any one of these other organizations may be affiliated. But if a farmer joins a local co-op which in turn is a member of a larger co-op, the larger co-op cannot solicit the individual member.

It would seem that by applying the same logic that went behind the FEC's regulation to cooperatives, Land O' Lakes' request should have been granted. But it was not.

The CHAIRMAN. Let me get this absolutely straight. I am a member of Southern States, and they have local outlets, and then there is the larger Southern States distributing operation. The locals can solicit, but the overall Southern States operation cannot, is that what you are saying?

Mr. FINERFROCK. Do you pay dues to Southern States or do you pay dues at the local level to a separate co-op?

The CHAIRMAN. Well, you operate—as a consumer, you have certain rights to refunds.

Senator JEPSEN. Are you talking about a power company?

The CHAIRMAN. No.

Senator FORD. Southern States is a farm cooperative in our area.

The CHAIRMAN. It sells farm supplies.

Mr. FINERFROCK. Well, in this particular instance, the way the situation works is that the farmers join their local association co-op; the association co-op is part of the Land O' Lakes. And so if that is the same type of situation as you are involved with in Southern States, then, yes, that same rule would apply.

The CHAIRMAN. As you do business with the cooperative, you get certain certificates of—well, they call them stock, I believe; they are actually membership shares.

Senator JEPSEN. And you would be also—now that I know what you are talking about—you would also be a voting member of your local co-op, you would be a voting member eligible to vote also with the Southern States.

Mr. Chairman, the exclusive right for unions to establish this type of fundraising operation was not conferred by Congress. In fact, if the legislative history shows anything, it is that Congress went to great lengths to insure that cooperatives, corporations without capital stock and labor organizations should all be treated equally. Apparently the Commission does not agree with this fairness doctrine and it seeks to go much further than Congress ever intended and confer special rights on groups it considers worthy.

Beyond this lack of independence, one of my major concerns about the Commission stems from its unrestrained power. As pres-

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ently constituted, the Commission has the ability to participate in every decisive stage of a proceeding. It can act as detective, investigating allegations of impropriety; it can then change hats and become the prosecutor in issuing a complaint; and, finally, it can switch hats again and become the judge in deciding whether or not the allegations have been proven or not.

One need not be a lawyer to understand that this concentration of power only lends itself to abuse. In fact, our forefathers were concerned with the inherent danger of independent government agencies. When asked about the idea, Thomas Jefferson said:

> Whatever power in any government is independent, is absolute. Independence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law.

Supporters of the Commission point out the need for strong enforcement of the law, which I support. But to support the claim for strong enforcement, these same individuals will point to Watergate. As you will recall, Mr. Chairman, the argument in favor of the Commission was centered almost entirely on Watergate when the issue was debated in Congress. Unfortunately, to suggest that the present law, or any law, for that matter, could have prevented Watergate serves only to confuse the issue.

The fact of the matter is that even the 1974 act, which created the Commission, could not have stopped Watergate from occurring. Just as individuals have found ways to circumvent other election laws, so, too, would the Watergate participants have found ways to circumvent this law.

This does not mean, Mr. Chairman, that we cannot change the electoral process to prevent corruption, but tinkering with the law is not the answer. We tinkered with the law in 1976. We tinkered with the law again in 1979. And now we are faced with the possibility of tinkering with the law again in 1981. At some point we have to realize that you cannot make a Cadillac out of a Volkswagen.

As I have tried to point out, Mr. Chairman, not all the problems encountered by candidates and campaigns can be laid at the feet of the Commission. Clearly, there are some very serious problems with the law itself. For instance, under the present law, there are three principal definitions of the term "contribution," 14 exceptions to 1 definition of "contribution," 5 exceptions to the other 2 definitions, and a substantial number of exceptions to the exceptions.

But I would submit that any time you can get Roger Jepsen, Eugene McCarthy, the American Civil Liberties Union, and the American Conservative Union to agree, there must be something to their argument. We all agree that the Commission should be abolished.

I urge the committee to give serious consideration to a major overhaul of our Nation's election laws. Abolishment of the Commission is not as drastic an idea as many people would have us believe. Whatever action the committee decides to take, I urge you to have two overriding principles which guide your actions on this issue: simplicity and faith.

Recognize that the simplest law can very often be the best law. People have been trying for years to re-invent the mousetrap and have found this an exercise in futility. I firmly believe that returning to a simpler election law will go much further in restoring the public's confidence in their elected officials.

Finally, Mr. Chairman, have faith in the American people. For too long, Washington's actions have been guided by the misconception that they knew what was best for the American people. Recent history shows us that this is simply not true.

When given the necessary information, the American people can make informed, intelligent decisions. Let's have a law that gives them the necessary information and then let them make the decision.

I appreciate, Mr. Chairman, your giving me the time to make my views known, and, as I mentioned, I look forward to working with the chairman and ranking minority member of this committee on arriving at an acceptable solution.

Mr. Chairman, I ask that a study of the Federal Election Commission prepared by the House Republican Study Committee be inserted in the record of this hearing.

I urge the committee members to read this report. It is both interesting and informative.

The **Chairman**. Without objection, it will be included in the record. [See Appendix.]

Senator **Jepsen**. I thank you, Mr. Chairman.

The **Chairman**. Senator Jepsen, let me take up with the point you just made. You said when the American people are supplied with adequate information, they can come to the right decisions. And I certainly concur in that conclusion.

We did find, however, that as a matter of experience, that the previous system of simply filing campaign reports with the Secretary of the Senate, the Clerk of the House of Representatives—and I am confining this to congressional races now—did not in fact provide the American people with sufficient information. Yes, it is true that you could come here and go to the Secretary of the Senate's office and somebody would dig it out for you somewhere along the line, but it was not a form of educating the public in these matters that was doing the job.

So that is why we went to the Federal Election Commission.

You have outlined here what you feel are problems inherent in the Federal Election Commission. But I am wondering whether you think those problems are the result of the fact that the law is too complicated, or do you think they result from the fact that the people who are trying to administer the law are not doing so in the spirit which the law intends?

Senator **Jepsen**. It is my opinion that it is both, Mr. Chairman.

The **Chairman**. Well, then, let's go to the first half of that equation, your view that the law is too complicated.

What changes in the law do you think would make it less burdensome without jeopardizing the public's right to an electoral system that is perceived to be free of corruption and secretive practices?

Senator **Jepsen**. I will give you one example. I don't think we want to construct a piece of legislation here, but one example is the instance I gave where, under present law, there are 3 principal definitions of the term "contribution," and there are 14 exceptions to the 1 definition of "contribution," 5 exceptions to the other 2 definitions, and a substantial number of exceptions to the exceptions. That makes it pretty difficult to administer.

The **Chairman**. So that even if you had answered otherwise as to the administration of the law, even the best of administrators would have trouble with that.

Senator **Jepsen**. Absolutely.

The **Chairman**. Now, turning our attention to the Commission, of course that becomes a political question, and the membership will change or is in fact in the process of changing now, so I don't know that we have to devote too much time to that. The committee has engaged in a series of oversight hearings looking at the performance of the Commission as it is presently staffed.

Let me turn to Senator Ford.

Senator **Ford**. Thank you, Mr. Chairman. Senator Jepsen, I have two or three questions that I would like to ask you. You said that you wanted us to make the law simplistic and have faith, is that the way you——

Senator **Jepsen**. I said keep it simple.

Senator **Ford**. Keep it simple.

Senator **Jepsen**. And have faith in the American people.

Senator **Ford**. I know you are a very religious and devout person, and I don't want to attempt to quote the Bible to you, but I believe somewhere in the Bible it says "Faith without works is dead." I believe if we are going to keep the faith, we are going to have to work at it. And I believe working at it develops 20-20 hindsight. You have stated here this morning that the history of it has proven it will not work. But the history of it is our 20-20 hindsight, it gives us the opportunity to do the tinkering that you refer to in order to try to improve the law so that it will be acceptable.

There is one impression that is here today that I am fearful that you are running head on into, and that is the impression of the American people if you take the Federal Election Commission out of existence. Now we have a place where they can go and report, if they find something is wrong. Now we have an agency that will go after violators in civil cases. And if there is something criminal, then we have the Justice Department, which you referred to.

So I hope we don't get in the posture of tainting our image of trying to have fair elections in this country.

Now, with that said, let me ask you some questions about your reimbursement of compliance costs that you have referred to, that is, in your statement to the Election Law Task Force which I understand your statement this morning is based on. Am I correct in that?

Senator **Jepsen**. Would you repeat the last part—I'm sorry, Senator.

Senator **Ford**. Your statement this morning is based upon your statement to the Election Law Task Force. That is the impression I got; that your statement this morning—you have not put or framed your legislation yet, and so your statements today are based on your recommendations to the Election Law Task Force.

Senator Jepsen. My comments, primarily, as I stated in my statement, would go directly to the general discussion, philosophical, and addressed to the bill that you and the chairman have developed and presented.

Senator Ford. Well, let's say in your report, then, to the Election Law Task Force, you proposed that public funds be used to reimburse candidates for the cost of complying with the reporting requirements of the law, am I correct?

Senator Jepsen. That is one of the recommendations, institute a cost reimbursement program similar to the Equal Access to Justice Act; candidates in campaigns would be reimbursed by the Federal Government for reasonable costs associated with complying with reporting requirements.

Senator Ford. OK. Wouldn't this amount to limited public financing of Federal elections?

Senator Jepsen. I don't believe so; you are financing and helping reimburse what the Federal Government has laid on the backs of people that they do, that frankly contribute nothing to their campaign; it's a recordkeeping——

Senator Ford. The requirement of open reporting is something that is on the backs of the American people? I thought it was just on the backs of candidates.

Senator Jepsen. That may be your interpretation; that is not what mine was. I have made it very clear, Senator, that I support full and complete disclosure. That's a fact.

Senator Ford. Well, I understand that. I have been reporting mine, too, for a long time from a dollar on up, so this proposal of revealing everything doesn't bother me at all personally.

But nevertheless asking for the Government, the taxpayers, to reimburse the candidate for his expenses in my opinion is a limited part of public financing. You disagree with me, but that is your——

Senator Jepsen. That is your opinion.

Senator Ford. But you say that it is not public financing.

Senator Jepsen. No.

Senator Ford. All right. Couldn't that same concept, then, be applied to provide for funding to pay costs of a candidate responding to an unfair attack by one of the so-called independent expenditure groups or noncandidate groups?

Senator Jepsen. No.

Senator Ford. Why not?

Senator Jepsen. It doesn't even resemble, there isn't anything parallel, so I don't know how to respond to your question. It has no relationship to what we are talking about. We are talking about a Government commission, a commission that arbitrarily, in many instances, has made decisions and regulations that cause undue and unnecessary expense, in my opinion, when in fact the requirement for reporting—if I can give you an example, I will give you an example. The fact the FEC requires a campaign committee to report contributions of more than $200 from individuals, these contributions to be itemized; itemized information must include the date and the amount of contribution as well as the donor's name, address, occupation, and employer. Now, in many cases—in fact, 95 percent of the contributions in excess of $200, this information can be reported off the check and/or information provided on the enclosed card.

But I would suggest to you, Senator, that in 5 percent or more of the cases, this information is hard and costly to find. Also there is a time factor involved in researching this information.

To give you an example—the names have been changed to protect the innocent, Mr. Chairman, but this is a true story. The most flagrant example of this is that John Smith sent your committee an unsolicited contribution of $250; Mr. Smith's check has his name and the name of his bank but no other information; it also has in many cases a city in which he banks displayed on the face of his check.

Now, the FEC requires that before you report this contribution you must find out what Mr. Smith's address is along with his occupation, and whether or not he is self-employed. Well, this can be difficult, since banks by law do not have to give out information on their depositors; Mr. Smith could not be found in a telephone book; and the law also requires that if it is within the reporting period it must be submitted before you send your report in, and your report must be sent in and submitted on time. Therefore, you can, as in this particular case, hire extra people, bring in both accountants and attorneys, long-distance telephone calls, trying to ascertain and track down Mr. Smith's whereabouts.

You know, the bill—and I want to repeat what the campaign act amendment stated, and the Supreme Court stated in their ruling—the Court stated that public disclosure of contributions by individuals and by entities, particularly corporations and labor unions, is effective means of revealing the type of political support. But it also stated that the reason for it is that the legitimate public interest—in the legitimate public interest is the elimination of the appearance and the reality of corrupting influences.

Now, I ask you, in this particular case, which is a Catch-22 situation—I am sure you have experienced it yourself, not atypical—how can you be corrupted and influenced by a person you can't even find or don't even know?

Senator **Ford**. How many checks did you return in your last campaign of over $200?

Senator **Jepsen**. I don't know how many checks I returned.

Senator **Ford**. You had some that you had to return, or some that you had this kind of problem with?

Senator **Jepsen**. We returned a number of checks, Mr. Chairman.

Senator **Ford**. Were they corporate checks or were they checks on which you couldn't find the occupation?

Senator **Jepsen**. I don't know; if you would like to file in my campaign, I'd be glad to submit it to you.

Senator **Ford**. I just thought, you are so interested in this that maybe you went through your campaign very thoroughly and you could give me a quick answer.

Senator **Jepsen**. Well, I don't know what that specifically has to do with it, Mr. Chairman.

Senator **Ford**. Well, you know, I just wondered how many checks—well, let me ask another question then. You are saying that you want to require that the Federal Election Commission reimburse the candidate for cost of complying with the reporting requirement. How do you propose to finance the funding of the cost of this program?

Senator **Jepsen**. Mr. Chairman, this is recommendations I have made. I think, again, I indicated that rather than get into the specifics of building a bill or debating it, I was to report to this committee some of the philosophical reasons why I recommended the abolishment of the Commission. If you want to be specific, I have plenty of pages of specific cases here where the Commission has—and these are all a matter of record, not speculation—has in my opinion manifested what people are really concerned about in the centralization of power with regard to the first amendment. There is quite a few of them here where they just don't seem to get the message, time after time; they have taken the Reader's Digest to court; after that, the court threw it out, they took the pink sheet on the left, which is from the Phillips Publishing Co., to court; they didn't get the message. In fact, I would ask that we submit these for the record—I have several sheets here and won't take up the time—but it shows definitely the pattern of the treatment and the attitude that the Federal Election Commission has and the bias it has towards certain groups.

Senator **Ford**. Senator, I am not asking you about the bias of the FEC; I am not asking you about the problems we have had. I merely asked you a question on how you would finance the reimbursement of the candidates for their reporting charges.

Senator **Jepsen**. That is something that could be worked out. I have no particular recommendation, whether it would be the Finance Committee, or whatever committee would be appropriate for that. I have not come to that particular.

Senator **Ford**. Well, you want us to pay it, and I have been hearing a long time, or at least the last 10 months, that if you are going to increase the program you have got to find the money somewhere for it.

Senator **Jepsen**. This would not be necessary, Mr. Chairman. You can pursue this discussion as long as you want, but it would not be necessary at all to provide this if you had a simple law—and, again, I reiterate simplicity and faith in the people—then you wouldn't have to spend $100,000 trying to keep track of the arbitrary rulings and election laws that even the Federal Election Commission itself finds it difficult to administer.

Senator **Ford**. I have several questions, Mr. Chairman, and I think maybe I have taken up too much time. I thought, in view of the fact that this will become a hotly debated issue, that we could get some answer as to the Federal Election Commission. Is the Senator aware of how many references of violations the Justice Department were given prior to the establishment of the FEC? There is general agreement that Justice did not enforce the disclosure laws before that. The House Clerk referred 4,900 violations to the Justice Department, and nothing was done on any of those.

Basically, I think, the reason is that they were more or less civil; they could have been cleared up; and there wasn't anything criminal about them. So we had almost 5,000 references to the Justice Department. It seems to me that we would be imposing too much on the Justice Department through your request. As I see the budget, we are firing U.S. marshals, we are reducing all the crime prevention programs that we have in this country, and now we want to impose this kind of hardship on the Justice Department in spite of their present curtailment? Does the Senator still want to—does this seem to be justified in his judgment—to curtail their funds and still add this additional burden onto them? Or are you going to add some funds to the Justice Department for a section for Federal elections?

Senator Jepsen. I don't understand the Senator's question. You said we are discharging marshals and cutting——

Senator Ford. Absolutely, all you have to do is read the newspaper every day; 103 marshals were laid off because there are no funds. You go down to Florida where the criminal justice system, as far as narcotics, Immigration Service, all those programs are being cut back, curtailed, because of the reduction of the budget. And now you want to add the Federal Election Commission—in one case there, I cited 4,900 cases were referred to them. Are you going to give the Justice Department additional money to handle all these cases that might be referred to them? Are you going to suggest a section——

Senator Jepsen. I still feel I am not tracking, Senator, I'm sorry; I don't know what the marshals and immigration people have to do with the Federal Election Commission.

Senator Ford. I am talking about curtailing the ability of this country in the law enforcement arena, which is the Justice Department's responsibility, and, as I see it, the present budget is curtailing their funds and reducing the amount of money they have. Therefore, instead of expanding the Justice Department, they are curtailing the Justice Department, which you would add another segment to them and reducing their funds.

Do you intend to introduce legislation to increase their funds in order to pay for the new responsibility being placed on the Justice Department?

Senator Jepsen. Well, you are asking economic questions. Again, I fail to see what that has to do with the Federal Election Commission, but if you want to abolish the Commission and take their roughly $10 million, I am sure the Justice Department could——

Senator Ford. Well, you are not proposing that. In addition to that, you want to reimburse the candidates for their expenses.

Senator Jepsen. Mr. Chairman, I respectfully submit—I am not here to debate, Senator. I answered that question, and if you have a law that is simple and is something that you can present to the American people, you wouldn't even need to consider that.

Senator Ford. Well, we have it, and we are probably going to have it for a long time, Senator, and the best thing for you and I to do is try and clear it up and make it as good a law as we possibly can.

Senator Jepsen. That's my goal, Senator.

Senator Ford. But you want to abolish it; I think it's going to be here. We have two different views.

Senator Jepsen. That's correct.

Senator Ford. I think if we can come closer together on trying to make it a more effective Commission, then you would probably be better satisfied and the American people would feel like they are protected.

Senator JEPSEN. It's your opinion, Senator.

Senator FORD. That's correct. And that's about all the questions I have. Abolish it and have faith. I think we ought to try to make it a better law and a better Commission. And so that is my opinion.

Senator JEPSEN. I share that with you, Senator.

Senator FORD. Well, good. We have arrived at something.

Mr. Chairman, I will not ask any more questions. Let me ask one more question, though. [Laughter.]

Senator JEPSEN. Please.

Senator FORD. We are getting into the noncandidate, independent committees which have to report to the Federal Election Commission. That is the only vehicle we have to find out what they are doing, how much money they are accepting. They can do most anything they want to do.

At what point, in your opinion, do they cease to be a a noncandidate committee and become a candidate committee, or are you of the opinion of the chairman of your party that you ought to abolish those, and let them go into the two-party system and let the party be responsible for the candidates and issues?

Senator JEPSEN. I would have to think about that before I gave you an answer, Senator. That is something I understand the courts may be deciding. It's evidently a difference of opinion by a wide range, variety, of people and associations and groups. And if I knew the answer and was sure of it, I think I would then share it, but I don't. Do you have an idea that you might share with me?

Senator FORD. Well, I talked to Mr. Kamenar in here the other day, and we discussed the statement by Mr. Rollins who is the political liaison from the White House. He said he would be meeting with these noncandidate groups, and they would be exchanging directions and proposals and means between one another. Your chairman agreed at that time they have probably stopped being a noncandidate committee. At what point would you suggest they become a candidate committee? Should they then have the same responsibility to report as your committee has, whatever law we finally have?

Senator JEPSEN. I could submit an answer to that to you in writing, Senator; that is a very broad question and that is something that is being decided, I guess, or being debated right now by lots of people.

Senator FORD. I thank the chairman.

The CHAIRMAN. Senator Cannon?

Senator CANNON. Thank you, Mr. Chairman. Senator, you say you would abolish the FEC and create the Office of Federal Elections in the GAO, headed by an elections administrator appointed by the President for a 5-year term. You would have only one person making the decisions, then, is that correct?

Senator JEPSEN. Let me feed back your question. You asked, if the administrator be appointed by the President and serve a 5-year term, his offices would be in the General Accounting Office, and that——

Senator CANNON. I said, would that administrator be just one person making these decisions now that are being made by the FEC?

Senator **Jepsen**. Well, please understand that I support strong enforcement of the law, and that the decisions that were made on the basis of an administrator, one administrator, or whatever, would be based on I hope a complete overhaul and a simplification of the laws. The administrator would make initial decisions, yes.

Senator **Cannon**. Would there be any provision for advisory opinions such as is in the law now, with respect to the candidates being able to get an advisory opinion out of this administrator? If not, where would one look for guidance?

Senator **Jepsen**. I would expect that an administrator would look for guidance with regard to violations to the Department of Justice and ask for assistance there.

Senator **Cannon**. No, I am not talking about where the administrator would look for guidance; I am talking now about where the candidates would look for guidance, because they can go to the FEC now and get an advisory opinion with respect to a set of circumstances.

Senator **Jepsen**. That's the very point of simplifying this law. Yes, the Land O' Lakes people, for example, were told that they could file, they could have a hearing, and the estimate was—let me make sure I am correct—it was advised that it could be up to 2 years before a decision would be rendered. You know, that is not what I call simplification; it's not what I call accessibility to equal justice in any manner, shape, or form; and it is providing additional roadblocks for the free election process in this country.

Senator Cannon, I hear what you are saying in your question, and I am saying that you broaden it, if I may, by saying that the total reorganization of this by way of simplification would provide a quicker answer directly from an administrator, in my opinion, than you would by going through a hearing process that extends 12, 10, 18 months, whatever it may be.

I think this is correct. The legal counsel section of the Federal Election Commission now has 69 personnel. You know, they have got plenty of time and plenty of people to do all kinds of things. You take a little old candidate out here trying to—who isn't wealthy—and I think they should have equal access to a chance and opportunity to run for office—it's a very formidable roadblock to try to come up and run for office and to have to compete with that type of thing.

Senator **Cannon**. Well, I must say I don't quite follow you. As I take it, you are saying that one person could make that decision much more rapidly, and, if so, how much more rapid could they make it than the 60 day requirement—an advisory opinion must be rendered within 60 days now, doesn't the law require that?

I don't follow what you are saying about Land O' Lakes. Is that the butter company?

Senator **Jepsen**. Well, they are a number of things.

Senator **Cannon**. I buy Land O' Lakes butter; I am just wondering if they are the same company.

Senator **Jepsen**. Well, they are processors; they have a number of co-ops; they have everything from soybean, grain elevators, processing plants, and so on.

Senator **Cannon**. But doesn't the law provide now that an advisory opinion must be rendered within 60 days?

Senator **Jepsen**. That's correct.

Senator **Cannon**. Well, then, I didn't quite follow your example, then, of something that you could get a decision on within 2 years. I think any time you go to court you have got to look at the fact that you couldn't get a decision within 2 years.

Senator **Jepsen**. The advisory opinion was rendered, and it said that they couldn't do what, in their opinion, in their attorneys' opinion, other organizations, specifically labor organizations, were doing. This is where your history of your bias comes in this Commission.

Senator **Ford**. Let me interject one thought here. Land O' Lakes request was received May 1, 1981; the decision was given June 29, 1981—that's 2 months.

Senator **Jepsen**. The advisory opinion was that they couldn't do what labor organizations are doing—that was the advisory opinion. Then when they asked what do we have to do to take this—and they were told they could have a hearing. That is what I said, very specifically said, Senator. They asked what the process would be, and they said, well, maybe, you know, it could go up to 2 years.

Senator **Cannon**. Well, you are arguing against the decision, then, not against the process, it sounds like to me. You are finding fault with the advisory opinion that was rendered.

I don't know that one man issuing those advisory opinions would be any more in the nature of a Solomon than the FEC.

Senator **Jepsen**. Well, they were advised, if they changed the regulation to include someone other than labor in the regulations—labor is the only one specifically mentioned. Now, if they would change that regulation to be more specific—my staff member here advises me that the specific statement was that to change the regulation, it might take upward of 2 years.

The **Chairman**. If Senator Cannon would yield just briefly—I don't want to complicate this, which is a danger, but I might throw a little light on this. As I understand it, it is the act that contemplates solicitation of personnel and stockholders of corporate members of trade associations, but gives no parallel treatment to individuals who are members of corporate cooperatives, that are in turn members of the soliciting corporate cooperatives. In other words, these rules are laid down in the act, and this hearing is the proper forum in which the Land O' Lakes problem should be resolved, as we consider amendments to the act.

I thank the Senator for yielding.

Senator **Cannon**. Well, if I wasn't confused before, I am thoroughly confused now. [Laughter.]

Thank you very much.

The **Chairman**. Well, I think we are indebted to the Senator from Iowa for putting his finger on a very confusing point of the law. But apparently the nub of the problem rests within the act itself. Frankly, I can recall the discussions we had at the time the law was enacted, and I suspect that nobody ever thought about individuals who are members of corporate cooperatives that are in turn members of the soliciting corporate cooperative. I mean, that is a fine point that I think just escaped us, and it wasn't any desire to discriminate against any particular economic or social or political group in the country; it was just such an obscure point that we never thought of it.

Senator Warner?

Senator **Warner**. Pass.

The Chairman. Well, we appreciate very much your presentation.

Senator **Jepsen**. Thank you, Mr. Chairman, for affording me this opportunity, and I look forward to working with you to bring about what we all want, and that is what is best for the American people, and to keep our elections free.

The **Chairman**. Thank you very much, Senator Jepsen.

We will now have a panel of two witnesses, Dr. David Adamany, vice president for academic affairs of the University of Maryland, and Dr. Michael Malbin of the American Enterprise Institute.

Gentlemen, let me say that your statements will appear in full in the record, and if you can summarize them as briefly as possible I think it will facilitate our getting to some discussion between ourselves.

STATEMENTS OF DAVID ADAMANY, VICE PRESIDENT FOR ACADEMIC AFFAIRS, UNIVERSITY OF MARYLAND; AND MICHAEL MALBIN, AMERICAN ENTERPRISE INSTITUTE

Dr. **Adamany**. Thank you very much, Mr. Chairman. I have submitted a statement in advance and will not try to read it, but just to touch on a few of the critical points.

I would like to go immediately to the question which is in a number of the bills that have been presented, about the changing of contribution limits for individuals and organizations. I gather most of the testimony before the committee will be in favor of raising those limits, and I simply want there to be some dissent in the record.

There has been a considerable increase in the Consumer Price Index since the law was written in 1974, about 46 percent, and it might be quite proper to adjust the limits upward to that extent. But to adjust them much further than that would create such a disparity between what the well off are able to give and what ordinary citizens can give, that it is bound to create a sense, a further sense, among people in this country, among voters, that while they have the equality of the vote, there is no equality of participation because contributions in the $4,000 range are simply out of sight for most ordinary people.

And I think that Congress ought to be concerned not only about how to find enough money to run campaigns, but also about the impression that campaigns give to ordinary citizens.

In one respect it seems to me that the contribution limits ought to be increased. I know you will be holding further hearings on the question of the Presidential campaigns, but I think it is not plain that all of us will be asked to come back. I would just say that the present restriction which prevents a citizen from giving any money in a Presidential campaign not only discourages participation but it seems to me to be an anomaly. The citizen who wants to support a political party committee at the local level, which is then permitted to make unlimited expenditures for grassroots support of the

Presidential candidate, has an opportunity to help elect a President.

The citizen who makes a contribution to the political action committee which spends on behalf of a Presidential candidate has access to the election of a President.

The only citizen who is frozen out of the system at the present time is the citizen who wants to contribute a few dollars directly to the candidate that he or she favors, and does not want to deal with intermediary party or PAC committees. It seems to me it would not be harmful to the concept of this law or to the concept of public financing if an ordinary citizen were permitted to contribute $100 to a Presidential candidate.

And we have had many, tens of thousands of citizens in some years, who have made such small contributions to candidates for President of the United States. And that kind of participation should not be closed down by the Federal Election Campaign Act even though the public financing concept has been a very workable one and one which I support.

Turning then to the question of political action committees, on which there has been considerable testimony, Senator, I would just like to say that a series of decisions by the Supreme Court make them very hard to regulate. I happen to think that political action committees, especially those that have engaged in independent expenditures of a negative kind, have done a good job of demeaning the political system. But they have first amendment rights, and the question is what can be done.

I would like to suggest that so far the Congress has not explored the possibility of using disclosure as a device to discourage independent expenditures or at least to put the public into a different frame of mind about them. And in my testimony I make the suggestion that a political action committee engaged in independent expenditures be required as part of its disclosure in its literature, television or radio ads, to indicate that its money came primarily from outside of the State in which the election is being held, if more than 50 percent of the money comes from outside. To require that to be disclosed would have a chastening effect upon the kind of scurrilous attacks that have occurred in at least a few States through independent expenditures. Voters of a State would then be balancing the attacks upon officeholders against the knowledge that the money for those attacks comes primarily not from his or her constituents, but from people elsewhere.

Now, I don't know of any other means that is available to us, given the Supreme Court cases, to limit the activities of political action committees.

Let me then turn very quickly, and perhaps appropriately now in light of previous testimony, to say that while the Federal Election Commission certainly has problems, it seems to me that it has functioned in many ways quite effectively. The conduct of people in politics—I was formerly an active politician before I went into university life—now is greatly different from the way it was in 1958 and 1959, when I entered politics as a young staff member. And certainly part of that can be attributed to the law that the Congress has passed and part of it can be attributed to the Federal Election Commission, not only because it is an enforcement agency, but also because it provides advice about how people can conform themselves to an enormously difficult law.

Now, I think it would be too bad if the sense of hostility toward the Commission, because of the complexity of some of its regulations, led to any substantial gutting of its present authority.

Some reductions in the burdens created by the law and by the Commission could certainly be achieved, especially if, as is suggested in bills by the chairman of the committee and others, that the contribution reporting thresholds would be substantially raised.

Finally, Mr. Chairman, wishing not to delay and to be available to respond to questions, let me say that all of us who watch this issue with some care are fully aware that there is not going to be legislation in this session of the Congress authorizing the public financing of congressional campaigns. It is one of the few advantages of being a tenured professor that you can be for things that everybody else is against, and that is not a matter without pertinence.

The Presidential public financing system has worked reasonably well, and certainly the disgrace that hung over Presidential campaigns at a time when we had 150 contributors giving $50,000 or more in the Presidential campaign—that's gone.

The CHAIRMAN. Some were even giving as much as $7 million, as I recall. One or two.

Dr. ADAMANY. Yes, one or two. But certainly those days are gone. What's happened to us instead is that the emergence of political action committees, who now contribute almost 25 percent of all the money spent in congressional campaigns, has shifted the cloud of public doubt from campaigns for the Presidency to the campaigns for Congress. At a time when the Congress has been asserting itself and attempting to correct the imbalance that occurred in which the Presidency became excessively powerful, when the Congress goes to the country, especially in campaigns—and the more we have disclosure, the more this will be the fact—it is too bad that the Congress now has over it the cloud of disgrace that is related to an awful lot of private money from interest groups. And sooner or later, it seems to me, the Members of the Congress will have to balance their distaste for public financing, because it fuels their opponents, against the damage to the institution that is occurring when campaigns for the Congress are privately financed from increasingly suspect sources.

The Presidential campaign is publicly financed, and the President does not have to face the same sense in the country that the sources of money for those campaigns are suspect, in many cases wicked.

So I would like to at least put in a dissent, knowing that there will be no such bill in this session, to say that public financing has worked well in the Presidential campaign and sooner or later the Congress ought to move in that direction.

The rest of my comments—I have tried to comment on all aspects of the bills that were submitted—are in my remarks and I won't continue.

[The prepared statement of Dr. David Adamany follows:]

PREPARED STATEMENT OF DAVID ADAMANY, VICE PRESIDENT FOR ACADEMIC AFFAIRS, UNIVERSITY OF MARYLAND

I am very pleased to have been invited to give testimony before the Committee on the application and administration of the Federal Election Campaign Act.

When the Act was passed, the primary purposes were seen as curbing campaign spending and limiting excessive contributions, which were widely thought to produce corruption, undue influence, or improper access in government decision making.

To achieve those purposes, Congress provided for sweeping disclosure of contributions and expenditures, limits on spending and on contributions by individuals and groups, public financing of presidential campaigns, and enforcement of campaign finance laws by an independent agency, the Federal Election Commission.

Since 1972 the Act has been changed by legislation and by judicial decision. More important than law changes, however, have been the changes in our understanding of the purposes of campaign finance legislation.

Today we approach campaign finance from a much broader perspective. And because the goals of public policy are now more diverse, agreement on specific provisions is more difficult to attain.

The testimony I offer today is guided by my belief that campaign finance legislation should meet, to the fullest possible extent, the following goals:

(1) The equal vote of citizens should not be seriously diluted by campaign contributions which produce great inequalities between citizens in the influence they exercise over the electoral process.

(2) Corruption, undue influence, and disproportionate access to policy-making should be limited.

(3) Widespread citizen participation in politics, including the making of contributions, should be encouraged.

(4) The most effective check on excessive and arbitrary government and the most important mandate for government action lie at the ballot box. A critical role in assuring checks and mandates lies with candidates who challenge incumbent officeholders. The conclusive evidence produced by contemporary scholarship shows that the effectiveness of challengers turns upon the availability of campaign resources, especially money. Campaign finance laws should encourage and perhaps assure a minimum base of resources for serious candidates, so that they can reach the voters with their programs and qualifications and with their criticisms of the opposition.

(5) Citizens should have information available about the sources of financial support for those seeking public office. At least as important is the availability of such information about those in office as they exercise their authority.

(6) Enforcement of the campaign finance laws should engender confidence among the public, should impose only necessary burdens on candidates and others in politics, and should be reasonably insulated from threats and adverse actions by those whom it regulates, except through the usual legislative and judicial processes.

(7) Campaign finance laws should acknowledge important institutional relationships and balances which mark our political system. The balance between executive and legislative authority is the most important of these. But the role of political parties in relation to candidates and to interest groups should also be considered.

I conclude that Congress has acknowledged many of these goals in its amendments to the campaign finance laws in 1974, 1976, 1977, and 1979. The Act is much better than it once was. It remains far short of achieving the reasonable purposes which it might serve.

CONTRIBUTION LIMITS

There has been widespread argument among political leaders and in the press that contribution limits should be substantially raised or perhaps abolished entirely. From the perspective of most citizens, there is already very great inequality between the contributions they can afford to make and the contributions made by those who give up to the existing contribution limits. Most citizens feel that they are not full and equal participants in the political process. Increasing expenditure contribution limits can only heighten that sense of deprivation. Contributions of $2,000 to a candidate during the election cycle and $25,000 per year in the aggregate are plainly out of the reach of most citizens.

In addition, raising the contribution limits by any substantial amount heightens the advantage that some group have in gaining access to elected officials. The so-called "double envelope" contribution in which many individual contributions are delivered by a single representative of an interest group is a well recognized device for communicating to candidates a group's generosity. There is probably no way to prevent this entirely; but increases in contributions enhance the influence of organized interests whose members individually can pool gifts up to the contribution limits.

Although contribution limits should not be substantially revised, it may be appropriate to tie them to the Consumer Price Index, just as expenditure limits now are. The CPI increased about 46 percent between 1974, when the limits were enacted, and 1980. An inflation-adjusted contribution limit would have permitted givers to increase their contributions by that amount. That seems to me the reasonable limit for additional contributions.

Finally, Congress can seek to increase participation in presidential campaigns by authorizing individuals to make small contributions during the general election. I would set these limits at only $100 to $200. Candidates are already publicly funded. The primary purpose of private contributions would be to assure that individuals can participate in the political process. Recent experience does suggest that substantial sums may be raised in small amounts, and this would further heighten competition between the presidential tickets. Obviously, no public funds should be used to raise these private contributions; only private funds should be used to solicit small contributions. Public money should be reserved for its original purpose—to carry on campaigns which present alternatives to the voters.

Under the FECA, idividuals can directly spend money to express their views about presidential candidates. Similarly, they can contribute up to $1,000 to a committee which will make such independent expenditures. And, they can make contributions to state and local political parties which engage in grassroots political action on behalf of presidential candidates. These arrangements have created an anamoly in presidential campaign finance: a citizen can participate in the presidential campaign by making direct expenditures, or by associating with a political action committee, or through a political party. The only thing he can't do is to directly aid the presidential candidate. Yet, it is the presidential candidate who directly represents policies in which the citizen is interested. To promote participation in politics and to substitute direct involvement for indirect advocacy, we need to allow citizens to contribute modestly to presidential candidates in the general election.

POLITICAL ACTION COMMITTEES

The testimony of others will document the vast increase in the number and financial resources of political action committees. It is enough to mention that more than $60 million dollars of contributions and $16 million in direct expenditures by PACs have appeared in preliminary tabulations by the FEC. Virtually all of the contributions went to congressional races; very little money was given to presidential candidates. On the other hand, more than half of the direct expenditures—about $9.5 million of $16 million—was in support of presidential candidates.

There are legitimate public concerns about the looming influence of political action committees. They may have provided as much as 25 percent of all congressional campaign funds in 1980. Moreover, corporate PACs and business and health association PACs have become, together, the dominant force among all PACs. The style of campaigning of the so-called ideological PACs has, in my view, demeaned our politics. The vituperation that marked many negative campaigns against selected Democratic senators in 1980 has been condemned even by leading Republicans, who find that their candidates have suffered from backlash against PAC tactics and that the GOP has been blamed by some voters for the tactics of PACs against the Democrats.

In my mind, the question is not whether PACs are destructive forces in our political process. I believe they are. Rather, the question is whether anything can be done to curb them without seriously infringing their constitutional rights. The answer to that question is probably that very little can or should be done.

The Supreme Court has made clear that independent expenditures are a constitutionally protected form of speech and that contributions to PACs as well as to candidates and parties involve important free speech and free association interests under the First Amendment. Moreover, there are certainly times when PAC activity expands the scope of issues which are discussed and does bring different perspectives to the attention of voters in political campaigns.

There are, moreover, practical problems in regulating PACs. Although I generally favored the kind of restrictions on total PAC contributions proposed in 1980 in the Obey-Railsback Bill, it should be recognized that such restrictions may simply increase independent expenditures. The same effect might occur if limits on contributions made by PACs to candidates were reduced below the present $5,000 level.

At bottom, the difficulty with PACs is that they do not seem to be accountable. Present regulations do not protect minority stockholders who object to corporate expenditures for PAC activity; the corporation laws in most states clearly provide that political activity which advances company interests is a proper responsibility of management, so that stockholders' suits will not successfully lie.

Ideological PACs have no membership to hold them accountable. They also are not subject to the same restraints as political parties, which are not only held in check by members and officeholders but also must avoid conduct which casts a shadow over their candidates, both present and future. Ideological PACs, therefore, have the luxury of engaging in whatever campaign tactics they choose, without being held accountable.

I believe that the most promising avenue for imposing some measure of responsibility on independent expenditures, without limiting their First Amendment rights, is through a special form of disclosure. I would recommend that advertising, brochures, and other pieces of advocacy by a political committee, other than a political party, should be required to include a disclosure of the percentage of funds received from outside the state in which the particular campaign is being held, if those out-of-state contributions exceed 50 percent of total contributions. PACs within a state generally desist from the most unseemly campaign tactics because their leaders are subject to censure in the press and by leaders in the state's political community. National PACs, which are not usually subject to such informal restraints, would find the credibility of their most virulent campaign tactics blunted when the public became aware that mean attacks on state political figures were being conducted almost entirely with out-of-state funds. Public reaction would then serve as a deterrent and corrective in campaigns where PACs engage in scurrilous campaign tactics.

DISCLOSURE: NECESSARY BUT NOT SUFFICIENT

Some critics of the FECA have argued that contribution and expenditure limits are unnecessary. Disclosure, they argue, is sufficient to police political financing practices.

This argument strikes me as naive. First, disclosure does little to help promote competition in elections. Second, the impact of disclosure is to place candidates and political committees under incredible cross-pressures. On the one hand, they fear adverse voter reaction if they accept large contributions or special interest gifts. On the other hand, they face the desperate need to raise large sums to meet the high cost of campaigning, which escalates every year because of inflation, new campaign technologies, and a growing electorate. Our experience in the past is that candidates faced with these pressures will accept troublesome contributions and take their chances with disclosure.

Third, we are rapidly learning that disclosure is not an effective means of restricting contribution and expenditure activity during campaigns. The very extensive disclosures required by the FECA have provided such vast and complex information that it is difficult to digest it and transmit it to the public during the short span of an election campaign. In addition, only a small portion of the news media in this country has shown real interest in providing in-depth coverage of campaign finance information. To the extent that the press is partisan or editorially supports particular candidates, it is likely to cover campaign finance with an eye to aiding its favored candidates. Reliance on private institutions, such as the press, which have their own political preferences seems to me, at best, to be a dubious substitute for the regulation of political processes by an independent public agency. Voters' reactions to campaign finance disclosures are not well documented. At least one study suggests that voters see political finance disclosure through partisan eyes: during the 1972 campaign. Democrats tended to view disclosures about President Nixon's campaign financing arrangements with alarm, while Republicans did not take the disclosures seriously.

Perhaps most important, the exposure of dubious political finance practices might not carry much weight with citizens even if they are well informed and concerned. To put the problem directly: would a rational citizen vote against a candidate who engaged in dubious financing practices if that candidate best represented the citizen's views on major issues of national economic policy, foreign affairs, civil rights, and so forth? A citizen can rarely be expected to cast a vote based on the correctness of political processes. In a democracy the substance of issues is so important that it must be seen as the critical variable in casting a vote. Therefore, public agencies must serve as watchdogs over the integrity of the political process. Disclosure is not enough; contribution and expenditure limits, rigorously enforced, must be employed to leave the citizen free to vote on the major substantive issues that face the nation.

EFFECTIVE ADMINISTRATION OF THE LAWS

The Federal Election Commission has become the common enemy of a remarkable array of journalists and political leaders. Liberal and conservative, young and old, seasoned and novice, they can agree that the FEC is either incompetent or malevolent or both. Apparently a good deal of the testimony at this hearing, if one can make predictions based on the witness list, will detail the wickedness of the FEC.

Although I have some reservations about the Commission's conduct during its formative years, let me register a dissent. Only five years after it was reconstituted, the Commission has adopted regulations and advisory opinions which cover thousands of complicated political finance activities. It has amassed the most complete data base on political finance possessed in any democratic nation, and that data base has been used steadily to rethink and reformulate policy. The Commission itself has been a leader in suggesting statutory changes that make political life easier under a regime of regulated campaign financing. And the Commission has clearly shown that campaign violations are likely to be identified and prosecuted.

If this has sometimes been done with too much zeal or about overly small issues, these excesses must be seen against their proper background. The FECA itself is highly restrictive and detailed; the FEC's faults are, in many ways, the mirror image of congressional drafting. Moreover, this nation endured more than half a century in which campaign finance laws were a shabby joke. The FEC has made clear that in the current era, regulation has teeth. The levels of compliance are staggeringly high. And while this is due in the main to the good faith of politicians, it may also be credited to the FEC's education and enforcement efforts.

Finally, it needs to be remembered that the commissioners themselves are not impractical reformers. They have been drawn consistently from the ranks of former congressmen, party leaders, and political action groups. If actions of commissioners so steeped in the political process are troubling to candidates and political activists, we should probably not look to the commissioners or the FEC as the cause.

Having made these comments, I believe that at least a few modest changes should be made in the Commission.

First, the FECA should be amended to make clear that the Commission can delegate administrative responsibilities to the chairman or to the executive director. Some read the present statute as prohibiting such delegation. On the other hand, I do not believe that Congress should, by law, delegate executive authority to the chairman or the executive director. The internal organization of the Commission should be left to the commissioners, but their hands should not be tied by denying them the opportunity to delegate appropriately.

Second, Congress should appropriate sufficient funds to support rapid conversion of political finance information into machine readable form. Disclosure has been a disappointment because resources are not available to process campaign finance data rapidly and put it into computer accessible form. But I reject the argument made by some members of Congress that resources should be reallocated from enforcement to disclosure. As I have explained elsewhere in this testimony, disclosure is necessary but not sufficient. It must be coupled with enforcement. To strip the FEC's enforcement capability in order to enhance disclosure would be likely to undermine the effectiveness of contribution and expenditure limits as well as other restrictions.

Third, until there has been a judicial determination about the constitutionality of the legislative veto, Congress should amend the FECA to provide for a two-house veto of FEC regulations instead of the present one-house veto. While only three regulations have been vetoed in five years, it is clear that the one-house veto has had such deterrence as to make the Commission more cautious than it should be in the issuance of regulations. The alternative has been to attempt to regulate through the issuance of advisory opinions. This process lacks the formality, notice, and hearings of the regulation-making process. We should concede that regulations are needed to carry out the law, and we should encourage the Commission to use the regulatory device rather than advisory opinions. This can only be done when the threat of the one-house veto is lifted.

REDUCING BURDENS ON POLITICIANS

The present campaign finance laws tend to impose heavy burdens on candidates, campaign workers, and party activists. Some of these burdens are unnecessary and should be removed. Raising the threshold for reporting contributions from $200 to

$500 would assure necessary disclosures while still reducing paperwork. So would raising the threshold for reporting individual independent expenditures by individuals from $250 to $1,000.

The present requirement that candidates and political party committees must file reports if they spend more than $5,000 may be too low. Increasing this threshold to $10,000 would not seriously jeopardize the public's right to know and it would greatly ease the disclosure burdens on the smallest candidate organizations and party committees, which are least able to afford the cost of disclosure.

The State-by-State expenditure limits in presidential nomination campaigns also seem burdensome and unnecessary. A vast accounting system must be maintained for every primary campaign. Yet there appears to be little public need for government to intervene in the strategic decisions of candidates to spend more money in some primaries than in others. The State-by-State limitations could easily be abolished.

Eventually it may seem wise to attach all of these thresholds to the Consumer Price Index. The definition of a small campaign, which does not require disclosure, will change with inflation. Automatic adjustment may be a better way to minimize burdens on candidates, campaign committees, and parties than is the periodic legislative amendment of the limits.

THE PERTINENCE OF PUBLIC FINANCING

The general impression among seasoned observers of campaign finance issues is that this Congress has no interest in public financing of campaigns. One of the advantages of being a professor is the luxury of urging reforms which no one is yet ready to accept. When I appeared before this Committee a decade ago, only Senator Philip Hart of Michigan showed the slightest interest in recommendations for the public financing of presidential campaigns. But in due course, that reform was enacted.

Let me argue briefly that public financing in presidential elections has worked well. It has provided a solid base of funds to wage competitive campaigns. It has virtually eliminated the scandal of excessive and special interest giving that had, by 1972, deeply marred the American presidency. It has freed candidates from enormous commitments of time for fund raising and has allowed them to devote more time to campaigning and, hopefully, to addressing issues. Some modifications in the laws about public financing are still in order, as I have previously indicated. But, overall, this is an experiment that has worked well.

Similar legislation is needed for congressional campaigns. The increasing reliance of congressmen on political action committees and other organized interests increases the disparity in influence on and access to the policy-making process by those interests and by ordinary citizens. Moreover, the growing role of interest groups in campaign financing is casting a shadow over the integrity of Congress. Eventually this cloud will disadvantage the Congress in its relations with the Presidency, as the public perceives that one branch is tarnished by suspicious campaign funds while the other is free from such influence.

Voter choice is enhanced by the public funding of congressional campaigns, because it assures sufficient resources for challengers to explain their views and to criticize those who hold office. This is surely not an attractive prospect for the incumbents who are asked to consider a public financing plan. Nonetheless, even they will recognize that effective citizen influence over public officials depends on whether or not voters have a choice at the polls. Public financing assures a vigorous and competitive opposition which gives voters a real choice. Finally, there is a symbiotic relationship between contribution limits and public financing. Contribution limits reduce the amount of money available for campaigns. By themselves they may starve the political process and deny resources needed for vigorous electioneering. Yet contribution limits are necessary to maintain some measure of equality between citizens' influence over the electoral process and also to reduce the dangers of corruption and disproportionate access in public policy making. Public financing is the logical way to replace funds which are taken out of the political process as a result of contribution limits.

A plan for partial public financing of congressional campaigns will, sooner or later, become necessary if Congress is to maintain its standing in the nation and if members of Congress are to be free from inordinate pressures to raise funds. Despite the widespread reservations which exist among members of the Senate, especially those elected in 1980, I hope this Committee will not fail to consider this alternative as it reviews possible changes in the Federal Election Campaign Act.

The CHAIRMAN. Thank you very much. Dr. Malbin.

Dr. **Malbin**. Mr. Chairman, members of the committee, I am a resident scholar at the American Enterprise Institute. My testimony reflects my views alone and not those of AEI, which does not take positions on issues of public policy.

There is general agreement about a few of the major developments in campaign financing since the FECA amendments were adopted in 1974. However, there is a great deal of dispute about what it all means or what Congress should do about it.

First, I should like to mention a few points that are not in dispute. One, campaign costs for House and Senate seats clearly are continuing to climb much faster than the Consumer Price Index. Two, challengers facing safe incumbents still have a hard time raising seed money; 50 percent of all such House challengers raised less than $25,000 in 1980. Three, political action committees have become more important both in proportional and in absolute terms—incidentally, this does represent somewhat of a shift from some things I wrote a few years ago. And, four, within that, the fastest growing PAC's are the ideological committees that specialize in independent expenditures. Seven of the ten biggest spending PAC's in 1980 were ideological—six conservative, one liberal. These seven PAC's spent $25 million in 1979 to 1980; that is almost $1 out of every $5 spent in 1980 by all 2,551 PAC's registered with the FEC combined.

Liberal PAC's will begin to catch up with the conservatives in 1982 and I predict this will mean continued growth in the proportional role of ideological PAC's in the years immediately ahead.

There is little dispute over what I have said so far. Disagreements begin when we start asking what it all means or discussing proposed remedies. For example, many observers have pointed to the growing number of business PAC's, to suggest that business is becoming far more important to election campaign finance than it used to be; I disagree with that. Yes, the number of reported business contributors and the amount of reported business money are going up; however, when we compare the situation to what existed before 1970, when campaigns were less costly and business money often came in undisclosed or illegal forms, one would be hard pressed to say that business money has become proportionately—I underline the word "proportionately"—more of a factor than it used to be, certainly not when we consider the role of ideological and single-issue groups. If anything, I would maintain that business' participation has been made healthier by putting everything out on the table where the public can see it.

Disclosure of labor's and business' administrative costs would be another salutary step in this direction. So would disclosure of funds spent on registration and getting out the vote.

I also disagree with the suggestion some have made to the effect that campaign laws have decreased the role of the parties. The Republican Party has shown itself able to operate quite well under the law; the Democrats have a lot of catching up to do, but they cannot blame their fund-raising problems on the law.

Let me turn now to the question of remedies. Any attempt to change the campaign finance laws should start with one basic given, and that is the first amendment. The Supreme Court has ruled that independent expenditures cannot be limited under the

Constitution. Therefore, Congress should face up to the fact that any attempt to put further limits on campaign spending or contributions will only serve to increase the proportional importance of those highly organized, generally ideological groups that rely on independent expenditures.

What can Congress do about them? One suggestion is that parties should be given equal treatment by taking off all statutory limits on the coordinated expenditures they make on behalf of Senate and House candidates. That would lessen the importance of independent expenditures. However, it would also have two other consequences of which Congress should be aware: First, it would increase the power of the President and national party committees beyond all historic precedent; and, second, it would stimulate the kind of technocratic support activities that the chairman disparaged in the November 20 hearings.

But there might be another way to achieve a similar objective without these disadvantages. Under the 1979 amendments, State and local parties, and not the national committees, were allowed to raise and spend unlimited amounts on registration and get-out-the-vote drives to help the Presidential candidate. In 1980 Republican State and local parties spent an estimated $8 million and used 800,000 volunteers under this provision. Many of the 800,000 volunteers were active in their first campaign. As an aside, I should say that one thing I would be concerned about, if individual contributions to Presidential candidates were allowed in the general election is that they might tend to undermine the contributions to the parties.

I think that Congress should consider extending the 1979 exemptions to State and local parties to include similar party activities in Senate and House elections. These kinds of grassroots activities serve important party-building functions. Moreover, such an amendment would not favor the Republican Party in the way lifting all party spending limits would. Phone bank volunteers are one area in which the Democratic Party and organized labor have proven themselves over the years.

Next, I turn to the problem of incumbency advantage, challengers, and seed money. It has been argued in recent years that incumbents have all the advantages in raising campaign funds. Our studies at AEI over the last four elections have shown that the fundraising advantage declines considerably or evaporates in competitive races. Some have argued that, therefore, there should be public financing to help challengers. I think if the intention of public financing is to help challengers, it would do so only in races that are safe for the incumbent. Once you get into a competitive situation, fundraising already is equalized.

In addition, the public financing bills that have actually been before Congress were coupled with spending limits. Public financing may help challengers who are going to lose anyway, but spending limits, political scientist Gary Jacobson has shown, will hurt challengers who have a real chance—unless those limits are set much higher than anyone in Congress has contemplated so far.

Nevertheless, there may well be some public policy reasons for giving public assistance to candidates. However, this can be done without the baggage of spending limits. In fact, we do so already with 50-percent tax credits and subsidized postage. There should be more of the same, maybe a 100-percent tax credit for people who give small amounts to parties or candidates—not PAC's—maybe as small as $5 or $10. Before this is dismissed as ludicrous, in light of the supposedly high cost of campaigning, it should be pointed out that if every person of voting age in the country gave $3 in the last election, that would have been enough to pay for every Federal election in 1980—House, Senate, and Presidency. Such small tax credits would clearly restore the small giver and decrease the proportional role of PAC's.

There is one problem with the idea, one area that it leaves out: The ability to raise small contributions generally requires a well-organized campaign. It doesn't really deal with the problem of the little-known candidate who is looking for seed money. As I mentioned before, half of the House challengers who got less than 40 percent of the vote in 1980 were not able to raise even $25,000; that is, they couldn't raise the seed money needed to begin a modern campaign.

I did an analysis of seed money in the 1980 elections. Most of it still comes, as it always did, from locally based individual contributors.

If Congress wants to improve the political dialog and encourage competition, it would be well advised not to impose more limits but to make raising seed money easier. For example, why not consider a $25,000 individual—not PAC, but individual—contribution limit during the first $50,000 of fund raising? Then, after a candidate's first $50,000, normal limits would apply.

Finally, I come to disclosure. The FEC I think has done an excellent job with disclosure, given the statute and given its budget. However, the statute and budget do produce severe constraints. It has been reported that Congress gives the FEC a smaller budget after inflation than it gave the equivalent agencies in 1971–74. Within that smaller budget, Congress has set specific mandates on how quickly the FEC must act on compliance, advisory opinions, and the like, while the timing of disclosure, requests for information, and so forth, are left to the Commission's discretion. Small wonder, therefore, that the Commission's final reports are so late in coming. If Congress wants those reports without a year's delay, it should set statutory deadlines and it should also direct the Commission to allocate $500,000 of its budget away from the general counsel and toward disclosure.

I do not see how Congress can act intelligently without interim reports, such as the kind we had in 1978, by April 1 of the year after an election.

That brings up a final point. Congress has itself to blame for some of this year's disclosure problems. The 1979 Act was passed in December. It required the FEC to come up with new forms, new instructions, and new computer programs during the first 3 months of 1980 in the middle of the primaries, the Presidential primaries. If Congress cannot pass a law by summer of an odd-numbered year, it should delay the effective date of any law until the beginning of the next election cycle; this time that would mean January 1983.

I would be happy now to respond to questions.

The CHAIRMAN. Thank you, gentlemen. Dr. Adamany, you opposed any substantial increase in the contribution limits. What about the recommendation of Chairman Richards of the Republican National Committee which was to allow the political parties to spend more on behalf of the candidate? I think his point is that party contributions will not have the same corrupting effect as very large individual contributions. So wouldn't that be one of the ways that you might offset the special interests that I think we all are concerned about?

Dr. ADAMANY. Yes. Let me make clear that even with regard to the individual contribution limits, I would certainly be prepared to have those adjusted for inflation, since that really just maintains their constant value. But I agree that there could be larger party contributions to the candidates without the jeopardy from political action committees and other special interests.

There should nonetheless continue to be some limits since there was a time in our history at least, though it is not a current time, when the political parties were as great a menace to the public's control of government as were special interest groups. That era has gone; it is not clear that it would ever come back.

But some increase would certainly seem to me to be wise. The Supreme Court has helped that along in its recent decision, November 10, permitting the Congressional campaign committees to act as agents for the State and national committees in the expenditure of the coordinated funds. But some increase in those limits might very well be appropriate.

The CHAIRMAN. Dr. Malbin, you would agree, I think—in fact, you said that you thought lifting the ability of the parties to spend on behalf of candidates could increase their power beyond all historical precedent.

Do you agree that they should be lifted at all or are you opposed to any increase?

Dr. MALBIN. No; I said that it would lift the power of the national committee beyond all historical precedent, and I think that that would be a concern.

I think that if the money were channeled through the State and local parties, it would be less serious. And that is why I suggested that the 1979 amendments merely be extended to Senate and House candidates.

The CHAIRMAN. Now, Dr. Adamany, you advocate raising the threshold for reporting of contributions, from the current $200 to $500, which is the same provision that I have suggested.

But we are both subject to criticism on that. And one of the criticisms is that according to the FEC figures, 43 percent of the total amount of individual contributions to House candidates were less than $499.

So would the purposes of disclosure be damaged as the percentage of contributions of unidentified money increases?

Dr. ADAMANY. I think not, and in fact I think there is a benefit other than merely making the law less burdensome, to increasing the disclosure threshold. I think certainly the testimony before the committee which has referred to the first amendment has not recognized the first amendment issues related to disclosure.

The Supreme Court has certainly pointed out that when you compel a person to disclose a campaign contribution, you compel them in a sense to disclose matters of political belief and association. That is a sensitive area. There is a long line of Supreme Court cases sheltering people, especially in the civil rights area, against making disclosures about their political beliefs.

The small contributor poses no danger of corruption, a small contributor under $500. Yet disclosing his or her contribution, especially if they support unpopular candidates or causes, may subject them to a certain amount of community disapproval. And since most of the unpopular political causes in this country are not well off and are supported by small contributions, we would make some gain in constitutional values, I think, by increasing the disclosure threshold to $500, thus immunizing from community disapproval or retaliation a whole lot of people who give small sums to unpopular causes. And we would not jeopardize the integrity of the Government because there is no corruption potential with those small contributions.

The **Chairman**. Well, now, would you and I create serious problems in the monitoring process if our proposals were adopted. Let me give you an example. Under existing law, I think a husband and wife with several children might be reluctant to report as individual contributions from, say, the children, particularly if the children are minors, contributions which in fact had their source in the husband, or the principal income earner of the family. Perhaps the wife is a wealthy woman in her own right and her business interest is such that she wants to promote a particular candidate—however the money arises, you give $499 to each of several children. And so in effect it is a $4,000 or $5,000 contribution from one person in the family, but each of the kiddies trots up to the window and puts down $499 and there is no record of it, there is no reporting of the names of the contributors.

Dr. **Adamany**. Certainly that is a danger.

The **Chairman**. But is it a serious danger?

Dr. **Adamany**. I would think not. It's a question of judgment. Unless people considerably change their childbearing habits in order to evade this law, it seems to me that the number of children available to do this is likely to be relatively small and would not in the aggregate amount to a dangerously corrupting gift.

So except in extraordinary cases, there would be, I think at best, only a modest impact.

And the relief from the burden of the law, both for those people who want to be shielded from disclosure because their views are unpopular and for the amount of record-keeping in disclosure that is required on the campaign finance forms, is such a large gain that on balance it seems to me you would want to take that chance.

Dr. **Malbin**. Mr. Chairman, I wonder if I might say a word on that point.

The **Chairman**. Certainly.

Dr. **Malbin**. As a frequent user of the reports, I applaud the honorable intentions of people who disclose every dollar they receive but would have to say that the records become virtually unusable when the drawers are filled with the reports of such very small contributions. I wouldn't venture to suggest exactly where the limit should be, but what most users of disclosure forms are interested in, I believe, is not the $25, the $100, or even the $200 contribution.

The CHAIRMAN. Senator Warner.

Senator WARNER. No, Mr. Chairman.

The CHAIRMAN. Dr. Malbin, let me ask you this question, in following that up. Has disclosure, in tandem with the contribution limits, proved to be a meaningful deterrent to corruption in the political process, in your judgment, by eliminating the kind of quid pro quo relationships between candidates and contributors? Do you think we are better off than we were?

Dr. MALBIN. I think disclosure has been very important. I think, especially as you get toward the end of an election cycle, or after it is over, that some kind of limits are needed; disclosure by itself wouldn't be used by the public. I think that limits are especially important in that last month; I don't think they are as important early, when people are looking for seed money because disclosure of early money is used effectively by opponents and by the press.

The CHAIRMAN. Well, now, the PAC situation tends to change that in some way—I'm not quite sure how. My own situation turned out to be a very happy one, because, as I recall our figures in my last campaign, we had 65 percent of our money raised from individual contributors with an average of something like $27.50 per contributor. The other 35 percent came from PAC's, of which precisely 17½ percent were business PAC's and 17½ percent were labor PAC's. But that isn't the normal profile. [Laughter.]

And in your testimony you cite that 29 percent of the contributions to candidates for the House of Representatives in 1980 came from PAC's, while Senate candidates received 20 percent from PAC's, which represent an increase of 4 percent over 1978 in the House races and 6 percent in the Senate races.

So this seems to be reviving that relationship, the possibility of a quid pro quo.

Dr. MALBIN. I don't think that they exist, frankly. I mean, I don't think that the normal situation is that a campaign contribution results in a quid pro quo on policy. Let me put this another way. If you did away with all campaign contributions from interest groups, I think that those groups which have the political power to back up their contribution with something substantive in the electoral arena have many, many ways of gaining access. So that I don't see the contribution as the main source of special-interest influence. And I don't see an increase in the proportion of money from PAC's as meaning an increase in quid pro quo relationships. I am not sure what it means, frankly; there has been a growing diversity in the kinds and numbers of political action committees involved; on any particular piece of legislation you normally would have groups opposed to each other.

So, I would be very hesitant to jump to the idea of quid pro quos.

Now, the fastest growth has not been the 4 and 6 percentage points in direct contributions; the fastest growth has been in independent expenditures. And there you are not talking about the same sort of lobbying quid pro quos. What you are talking about are single issue and ideological groups, and the kinds of trade-offs that are being asked are very different; and not only the amount of money but the electoral clout involved is far more substantial.

Dr. ADAMANY. Senator, I wonder if I could make just a brief comment about disclosure, because there is considerable discussion among some Members of the Congress about simply abolishing all the contribution limits and going to a disclosure system that would be considerably simpler. While I believe that disclosure has been a good thing, and while it certainly has been helpful in identifying patterns of giving after the election, and in some ways therefore revealing who has been active in the campaign and is at the doors of the Congress or any other public body, seeking favorable legislation, I think it is very unlikely that disclosure has an impact on campaigns, and I think that it is a very small deterrent to any campaign contribution or expenditure patterns.

In the first place, the information is so voluminous that almost nobody can get through it. Only a handful of the newspapers or media in this country have any real staff in Washington or in the State capitals, where it is also filed, that can go through that information.

So that we are getting very little reporting in the country; there is a fair bit in the Washington Post, but very little in the country on campaign finance practices. When we do get it, it tends to be a relatively small story with lots and lots of names in fine print which nobody in the public understands and probably doesn't read. The one study of this that has been done was in 1972 when there was a lot of disclosure during the campaign about financing the Presidential campaign. What we discovered was that most citizens were guided by party identification; the Democrats thought that the revelations about Mr. Nixon's campaign financing were scandalous, and the Republicans thought it was just the common practice in the country and nothing to be alarmed about.

And citizens are quite likely to take that view in the face of confusing information; they are guided by their party preference.

And, finally, even if everything worked right, even if the information were understandable, and the press printed it, and the public read it, it seems to me that very few voters would want to make their decision based on campaign financing practices. What's important to voters is the state of the economy or our conduct of foreign affairs or other momentous issues.

The CHAIRMAN. Are you better off now than you were 4 years ago? [Laughter.]

Dr. ADAMANY. The answer is no; but I don't think that was the point of the question. But the point is that the idea that voters should vote based on campaign finance disclosures is a miscalculation about the nature of democracy. And so disclosure has its purposes, but without limits it seems to me there would be very little constraint, because disclosure is not an effective deterrent.

The CHAIRMAN. Let me ask each of you just one final question. I see we have been joined this morning by the distinguished former Senator from Ohio, Robert Taft, and I suspect that when he and I began our first political campaigns, we did it by calling up a few friends and asking them to come around and have a cup of coffee and asking them what they thought of the idea and how we should get started. And that was the way campaigns began just a very few years ago.

Now, if you want to campaign, the first people you call up are certified public accountants, and you get them to open up a set of books before you do anything else, and then you call lawyers and you ask them to start holding your hand from before you have your first meeting. And then you call up some professional campaign manager, and then you ask who has a mailing list and who can start you off on personalized fund raising letters.

In other words, there is a whole infrastructure now that deals with what used to be just a kind of a neighborhood enterprise.

Is this new technocracy of campaigns a deterrent to people who want to enter the political process?

Dr. ADAMANY. I don't know whether it's a deterrent—it probably is. And it is a fact of life, and it is not going to go away.

When I graduated from law school, I was the sole staff member in a statewide campaign in Wisconsin, and I was the whole staff throughout the campaign, so I understand precisely the point you are making. The fact is——

The CHAIRMAN. Did you win?

Dr. ADAMANY. We won, yes, sir. Politics is in competition with other aspects of society, and the more we develop high-speed technology and new techniques for communicating to people in all other aspects of life, the more that politics has to follow along.

And I don't know of any way to avoid that. The accountants-and-lawyers problem is a problem of every regulated industry, and as politics became an increasingly big industry it became increasingly regulated, and the lawyers and accountants followed.

What I would say about that is that it proves to be less burdensome in the Presidential races where the basic campaign is publicly funded and private money is raised to pay the regulatory costs. Sooner or later the Congress may come to that. At the present time it is a very substantial burden both financially and in terms of scaring people out of the political process.

The CHAIRMAN. But you don't see any alternative?

Dr. ADAMANY. I see no alternative.

The CHAIRMAN. Dr. Malbin?

Dr. MALBIN. I think that when funds are limited, any sensible buyer of any service tries to look for the most efficient way of achieving his result, and in campaigns these technocratic services have grown up because it is an efficient way to reach potential voters.

I also don't see a way of getting around that directly, but one way of doing it is to give people an incentive to use the kinds of campaign techniques that are less efficient but that have other beneficial results, namely, to give people a reason to go out and use volunteers, to knock on doors, or to make telephone calls, instead of using professionals. That is what the 1979 amendments did. It was an inefficient way for the Presidential campaign to get out the vote, but it had many valuable side effects. People did it, because under the law that was unlimited and other forms of activity were not.

The CHAIRMAN. Of course, our whole political system isn't based on efficiency; it's based on dispersal of power.

Dr. **Malbin**. I agree, yes.

The **Chairman**. Gentlemen, it's a great pleasure to have you here personally, and let me say it is also a privilege for the committee to hear from you. Each of your respective organizations have great respect in this community.

Dr. **Malbin**. Thank you.

Dr. **Adamany**. Thank you very much.

The **Chairman**. Our next witness is Mr. Fred Wertheimer, the president of Common Cause, well-known in this room.

STATEMENT OF FRED WERTHEIMER, PRESIDENT, COMMON CAUSE

Mr. **Wertheimer**. I don't know how I should interpret that, but I accept it.

The **Chairman**. Favorably—well and favorably known.

Mr. **Wertheimer**. I would like to submit my statement, Mr. Chairman.

The **Chairman**. Without objection, it will be reported as if read.

Mr. **Wertheimer**. And summarize my remarks. I would like to start off by expressing our appreciation to you for the leadership you have shown over many years now on this issue. This is an issue that we know you have been involved in the Senate going back at least to the very early seventies, and have stayed involved in. And we very much appreciate the role you have played and are continuing to play. You are holding these hearings and having——

The **Chairman**. Although I might interrupt you, Mr. Wertheimer, to say that my efforts may have been well-intentioned, but the Supreme Court said I was wrong.

Mr. **Wertheimer**. On some. As I remember, you were one of the principal sponsors when the Federal Election Commission was first introduced in the Senate. I would beg to differ with Senator Jepsen's testimony that the Commission arose solely out of Watergate or primarily out of Watergate. In fact, that Commission passed the U.S. Senate in 1971, and it came from a concern about lack of enforcement over many decades, not simply Watergate.

Our testimony is really focused on four areas, and I would just like to briefly run through them. The first deals with our concerns about the role that PAC's are playing in the political system today; we think it is a fundamental problem. The problem with respect to PAC contributions does not exist at the Presidential level because they play a minor role from a contributing standpoint, and that is simply because we have a different system for financing Presidential elections than we do for congressional elections. We have long supported public financing for congressional elections; we recognize, as David Adamany mentioned earlier, that this is not an issue that will necessarily receive serious consideration in this Congress. We think ultimately if the campaign finance problems for Congress are going to be solved, we must have some alternative form of financing elections, that in effect provides much greater incentives for small contributors and ways of broadening the base of any candidate's support.

If Congress is not looking at that question, then we would suggest that Congress look at a direct remedy to deal with the PAC problem, and the most important step that we think that could be taken at this point would be to place an overall limit on the total amount of PAC money that any candidate could receive. That type of legislation was considered in the House last Congress, passed the House, but was not considered in the Senate. Another bill has been introduced in the House, and we think that is the way to at least cap what appears to be and is a very explosive growth in the role of PAC's.

We have expressed deep concern about the role that independent expenditures are playing in the political process, and earlier witnesses have talked about it. It is tilting the process, it is having an impact on the capacity of the contribution limits to function effectively, it is putting candidates, regardless of party, in a position of losing control of their capacity to be competitive with their challengers.

We have proposed a method that we think would help deal with this problem. It is not a prohibition on independent spending, although we have a case pending in the Supreme Court now which tests the question of whether independent expenditures on behalf of publicly financed campaigns by political committees can be limited. And we would expect the Court would rule on that in the near future.

But the idea we would like to propose is that candidates be entitled to response time to deal with independent expenditure campaigns, free response time. This would put the candidate in a position of being able to respond without heavy expense, and also run what are becoming more and more expensive campaigns under a system of contribution limits. And we think that contribution limits are an essential ingredient of the whole framework of campaign finance laws.

We also think that the committee should take a look at the basic question of what precisely "independence" means in the context of independent expenditures. Following the Supreme Court decision in 1975, the Congress in effect enacted the language that the Court used in terms of defining independence, but there has been no real look at what should or should not constitute, and does constitute, independent activity. We would suggest that this is an area that the committee should look at and should attempt to clarify.

The third major area we deal with is the question of the Federal Election Commission. We also have been involved for a long time with the issue of enforcement of campaign finance laws. The history is very clear; prior to the creation of the Commission, there was no enforcement of the laws. That problem existed over decades, it had nothing to do with party or philosophy or who was in charge of the Government. It took the creation of the Commission to lead for the first time to serious enforcement of the laws, and we do have that. We also have serious compliance, voluntary compliance by people because the Commission exists.

The argument that enforcement should go back to the Justice Department is an argument that says it should go back to an agency that never enforced it before without any particular reason to believe it will enforce it again.

So we think the approach that is represented in your bill, Mr. Chairman, of trying to look for ways to improve the Commission is the correct approach. We recognize serious problems at the Commission, problems that should be remedied. We prepared a study, which we want to submit for this record. The major problems we found had to do with the performance questions of the Commission, management questions of the Commission, the structure of the Commission. We do think that changes can be made in this Commission which will improve its performance.

But if you are talking about eliminating this Commission versus not eliminating it, I think we are talking about whether we have a serious effort at enforcing campaign finance laws or whether, practically speaking, we go back to what we used to have, which was no enforcement of the laws.

We deal with a number of other areas. On the question of contribution limits, we agree with David Adamany's concerns. We recognize that in a million-dollar campaign, a $1,000 contribution or a $2,000 contribution seems like a relatively small amount. The other side of the coin is, for most people in America, the great, great bulk of people, they cannot begin to think of giving $1,000 or $2,000, so that every step of the way in which that individual contribution limit is increased in effect represents a greater role for a narrower and narrower class of people.

We are concerned about potential increases in the contribution limit. We recognize the inflation question exists; we agree with your concept of creating an overall cycle rather than an individual cycle. We feel we would be able to support an increase to $3,000, provided the Congress is willing to look at all the problems, not just this one; this shouldn't be dealt with in the abstract. In any event, we really do not think that substantial increases should occur. So that our preference would be an overall $3,000 limit, provided——

Senator **Warner**. I missed that. What did you say? Would you repeat that last sentence?

Mr. **Wertheimer**. On contribution limits, we are opposed to substantial increases in individual contribution limits; we recognize the inflation question, we accept the concept of Senator Mathias' bill of taking an overall cycle approach. On an inflation approach, we would come out for an overall $3,000 limit—but we don't think it makes sense, we think it is wrong to simply deal with individual contribution limits, and therefore we feel the PAC question and the independent expenditure question should be looked at as well.

We really see no public policy reason for increasing the overall $25,000 limit to $40,000 or higher, as others have argued. There we are dealing with a very, very small number of people, a handful of people. They will provide a minimal increase in funds for the overall political process. To give them, that very small group of people, an increased role does not seem to make sense to us.

On the disclosure question, I guess our feeling is, Senator, that perhaps a lot more progress could be made if the disclosure threshold was increased on the expenditure side but not perhaps on the contribution side. The contribution disclosure threshold was doubled recently from $100 to $200. I think it is a fact that given other circumstances, most of those contributions are going to be recorded by a campaign today, over $200; the information is going to be there. Senator Jepsen talked about the 5 percent problem in terms of finding the rest of the information, and while that responsibility is there, the law also has a best-efforts provision for the campaigns. Given the fact that we just doubled the contribution disclosure limit, we would at this stage stay with the $200, but look to increase the expenditure limit which I think has proven more burdensome in terms of gathering the information.

We support the proposals in your bill, Senator, to expand the reporting requirements for corporations and labor unions. We think there again reasonable thresholds are required, but we think, as you have said, that that would provide us a great deal more information on the activities of corporations and labor unions.

Finally, I just want to pick up on the point raised about what will happen to disclosure at the Commission, given budgetary problems. We are very concerned about the potential cutback in disclosure at the Commission, based on budgetary questions. We think that disclosure is one of the most important functions the Commission is responsible for, that they in many cases have been able to do a very good job of disclosing, although the time delays that Michael Malbin talked about are there and they are serious. But we think that it is a mistake to see cutbacks fall on disclosure; that is a very important part of the statute.

Thank you very much for the opportunity to testify.

The CHAIRMAN. On that very last point, I think we are all disturbed at the slow pace of reports and delays in the availability of information from the FEC, and we discussed that with them a little bit last Friday. To all intents and purposes the 1982 elections have begun, and yet we still don't have the reports from the 1980 elections.

I don't know how we are going to improve that. One response has been to resort to computers—let's put it all on computers.

What do you think about reducing some of the detail in reports? Is there anything that occurs to you that——

Mr. WERTHEIMER. I think increasing the threshold for the expenditure side of campaigns could substantially reduce details, particularly the larger the expenditure of the campaign, the more details are going to be reduced. Your suggestions about increasing thresholds for political committees and for candidates would reduce burdens for those really dealing with minimal amounts of money.

The CHAIRMAN. Now, you have opposed increasing limits for individual contributions; you have also expressed some alarm, or perhaps concern is a better word, about the influence of PAC's.

Do you believe that individual contributions pose the same danger, corruption of the political process, that you seem to think the PAC's do?

Mr. WERTHEIMER. They pose a similar danger the larger they get. I think it is quite clear that there is this difference: Most money that comes from PAC's comes from organizations that are also conducting organized lobbying efforts all the time. That is part of their lobbying arm. And from their perspective they do it within the law, it's authorized.

But the reality is that groups that are conducting ongoing lobbying efforts all the time are also providing more and more money for a candidate's campaign.

You don't have that same general organized lobbying factor when you look at individual contributions.

The **Chairman.** Wouldn't that be an argument for giving the individual contributor a little greater clout?

Mr. **Wertheimer.** That's where the question of what kind of increase should take place comes into question, because it is true that the larger amount that an individual can give, the more potential you have for that amount becoming a factor, particularly if it comes from a few people who happen to be working at the same organization or involved with the same cause—the larger you get, the more potential problems you run into. That is why our focus has taken us to try to figure out ways of enhancing small contributions; that is why we supported the matching concept, and still support the matching concept.

Senator **Warner.** Mr. Chairman, while we are on the subject of disclosure, I support your views on the need to continue that. If we were to eliminate small contributors only to eliminate the volume of paperwork that one must go through to make an analysis, would that be helpful, to raise that threshold?

Mr. **Wertheimer.** Well, this is one of the questions, and one of Senator Mathias' bill's suggestions would increase it from $200 to $500.

We just doubled that; we just changed the law quite recently.

The **Chairman.** From 1 to 2.

Mr. **Wertheimer.** From 1 to 2.

Senator **Warner.** Where is the dollar figure that you——

Mr. **Wertheimer.** Well, our view is that on the contributor side we would support staying with the over $200 disclosure figure, because we think that is important information. We also think it's information that most campaigns have, that as part of the bookkeeping you would do even if there were no campaign finance laws, you would have that information.

The **Chairman.** And given the avaricious nature of campaigns, you would keep that list so you can go back.

Mr. **Wertheimer.** You are going to go back. On the expenditure side, the issue is different, particularly if you are running a broader campaign or a statewide campaign, making sure you get every single expenditure itemized and receipted requires an accumulation of information that you don't start out with. You really do start out with that information on the contribution side. That is why our focus for relieving the burden, perhaps a large amount of the burden, would be on what the threshold disclosures are on the expenditure side.

The **Chairman.** Now, suppose you have a campaign which is well financed and is saturating the market with television advertising, do you think there should be any kind of compensatory free time given to the opposing candidate?

Mr. **Wertheimer.** Well, you earlier on asked the question about how did we get into the technocracy of campaigns, and at least I would argue that television costs, and the role of television in politics in this country, has had more to do with it than anything else combined. The costs of campaigns are going to keep right on going up as long as television plays the role it does.

The **Chairman**. Of course, for Senator Warner and me, it has particular problems, because when I buy a television ad from a Washington station, I am treating his constituents in Virginia to just about as much of that as my friends in Maryland are getting, and vice versa.

Mr. **Wertheimer**. Yes, that's a problem, provided you are not running for President.

The **Chairman**. Not to mention the voteless citizens of the District, who get both of us for free.

Mr. **Wertheimer**. I think the costs of television are a terrible problem for campaigns, and if there were some way to relieve it, it should be done. One of the ideas we have looked at is the question of very low-cost campaigns for candidates.

The **Chairman**. What would the effect be—if I were running a station and Senator Warner came to me and said I want a really big advertising budget, but I knew that there were six other people in the race who were going to come around and want free time, I might say I am not going to sell Senator Warner any, because it's going to end up as a net unprofitable transaction.

Mr. **Wertheimer**. Well, I guess it depends now on whether we are talking about free time in general or whether we are focused on the independent expenditure proposal we made. The law presently already places obligations on radio and television stations to give candidates lowest unit cost.

The **Chairman**. But they have to pay.

Mr. **Wertheimer**. If we are looking at the general question of campaigns, we would look at the issue of low-cost television rather than free television. If we are looking at the question of independent expenditures, there I think the issue is much more focused. There I think, given the problem that exists and the damage that we see being done to the political process, you can provide a remedy by giving those candidates who are subjected to independent expenditure campaigns the opportunity of free response. That is not giving all candidates in all races that opportunity.

The **Chairman**. Well, now, given your expressed concern—let's go back to PAC's—given your expressed concern about PAC's, we are told that the average contribution to PAC's is $80, and that the decision on which candidate to support, which candidate to contribute to, has in most cases involved a number of members of the PAC; it has not been an autocratic decision made by the leaders of the PAC.

If those figures are accurate, does that represent a way of strengthening the participatory process in American politics? Our great concern for the last few years has been that the participation has been decreasing, and in fact the American Bar Association says that we reached the high watermark in participation in Michigan in 1896, and it has been all downhill ever since. If PAC's are actually stirring people up, getting them interested, doesn't that say something for the participation in the democratic process?

Mr. **Wertheimer**. Not a healthy participation, Senator, not in our judgment. I would, I guess, take issue with the position that in the case of most PAC's there are large numbers of people participating in the judgment. The problem arises because of what I mentioned earlier: Once that money is aggregated, it winds up being tied in to lobbying campaigns; you are not dealing with an $80 contribution, you are dealing with an aggregation of those contributions, and a number of PAC's of similar nature, so that you have hundreds of labor union PAC's, and you have dozens of PAC's representing the oil industry. And what happens is, that money, if it came in as a small contribution and a general reflection of interest, I think would be healthy; but it winds up coming in too closely tied to lobbying campaigns and specific legislative goals. In so doing, it does not become a healthy participation. Small contributions to candidates and to parties, I think, are very healthy. They lose their definition as a small contribution when they go through the PAC process; they take on much more of a laser-beam focused purpose, and that purpose is very often tied to attaining specific legislative decisions in Congress.

Senator **WARNER**. Would the Chair yield on that point? Do you find there is any correlation between the growth, the explosive growth of PAC's, and the decline in overall voter participation?

Mr. **WERTHEIMER**. No, I don't. I think there has been a correlation in the growth of PAC's and the growing stakes in Washington, and given the fact that we deal with a $700-billion budget and $250 billion in tax expenditures. The growth of PAC's under this process is a natural act, given the definition of the way the process works, because people do have stakes involved in Congress; they have specific interests and they are trying to influence the Congress.

But the impact is deleterious, and the result is—a negative impact on the process. It winds up hurting the institution and making it harder, not easier, for Members of this body and the House to do their jobs.

Senator **WARNER**. What do you attribute as the cause for the decline in voter participation?

Mr. **WERTHEIMER**. Well, I wish I knew the answer to that—a variety of factors, certainly a long period of time of loss of confidence in government and in various other institutions. It is one of the most, if not the most disturbing aspect of our political process. Every time you see a vote take place in Europe and see the number of people who turn out to vote, and then turn around to this country and see every time we go to an election less people are voting——.

The **CHAIRMAN**. It is particularly bluecollars. It's very interesting—European industrial workers vote in very high numbers, in this country, very low numbers.

Mr. **WERTHEIMER**. It's frightening.

The **CHAIRMAN**. Well, we are very grateful to you for being here, and we may have to call upon you further in the course of these deliberations.

Mr. **WERTHEIMER**. Thank you, Mr. Chairman. I would be happy to work with the committee.

[The prepared statement of Mr. Wertheimer follows:]

PREPARED STATEMENT OF FRED WERTHEIMER, PRESIDENT, COMMON CAUSE

Thank you, Mr. Chairman and Members of the Committee, for this opportunity to testify today. The Federal Election Campaign Act (FECA) is of critical importance to the integrity of this country's political process, and Common Cause is pleased to be able to present our views for this Committee's consideration. We would like to thank you, Mr. Chairman, at the outset for the leadership role which you have played in this and previous Congresses on campaign finance issues. At a time when some have been urging hasty adoption of changes in the federal election laws, such as elimination of the Federal Election Commission, we very much appreciate your advocacy of thoughtful and reasoned consideration of changes in these vital statutes.

The last ten years have seen a fundamental restructuring of the federal campaign finance laws, with changes of an historic nature occurring in the rules governing the role of money in American politics. The passage of the Federal Election Campaign Act (FECA) in 1971, with subsequent amendments in 1974, 1976 and 1979, have given us a campaign finance system which has eliminated many of the abuses of the past. The Federal Election Commission, which these laws created, has given us the first real enforcement of election law in our nation's history.

As is true with any statute, adjustments need to be made based on experience. New problems arise; changes in campaign techniques also can require alterations in the law. It is essential, however, that any changes which occur carry forward the basic goals of these statutes—to protect and enhance the integrity of our political process.

We would like to focus our testimony on four major areas: (1) coming to grips with political action committee (PAC) giving in congressional races; (2) dealing with the problems being caused by so-called independent expenditures; (3) making the Federal Election Commission a more effective enforcement agency; and (4) making adjustments in other aspects of the FECA.

PAC GIVING

In 1974, Congress established a two-track system for financing federal campaigns. For presidential races, a partial public financing system was enacted. This system has worked well—presidential candidates are no longer dependent on a relatively few "fat cats," large contributor and well-funded special interest groups for their campaign funds. The general election campaigns of the nominees of the two major parties in 1976 and 1980 were financed by federal funds—the aggregation of millions of one-dollar contributions from the voluntary income tax check-off. While some adjustments in the presidential system are no doubt necessary, they are incremental; we look forward to working with this Committee when it considers these adjustments next year.

While the presidential system has been fundamentally improved, the same progress, unfortunately, has not been made at the congressional level. Limits have been placed on individual and group contributions; effective disclosure requirements have pierced the darkness which once surrounded campaign treasuries. But in a significant sense, the financing of congressional campaigns has not been fundamentally reformed—campaign contributions remain a vehicle for obtaining access and influence in the United States Congress.

Major improvements are needed in the congressional campaign finance system—none more important than coming to grips with political action committees (PACs). During the last six years, we have seen an extraordinary growth in the importance of PACs in congressional campaigns. Since 1974, the number of PACs has increased from 608 to nearly 2,700. The amount of PAC money in congressional campaigns has dramatically increased as well, soaring from $12.4 million in 1974 to over $55 million in 1980. While spending in congressional races rose 23 percent in 1980 over 1978, PAC contributions rose 42 percent in the same period.

PAC contributions have a special quality—they are generally given by groups that are also regularly engaged in organized lobbying efforts. PAC gifts do not necessarily assure votes or support, but they do provide access and influence for monied special interests. Because of the edge provided by PAC dollars, special interest groups exercise an enormous and growing power in Congress--power that is often used to paralyze the policymaking process.

Last month's vote on the House floor on dairy price supports demonstrates anew the role that PAC dollars can play in contemporary politics. Despite support from the Reagan Administration and a broad coalition of business and consumer groups, the House blocked—by a vote of 243-153--an attempt to reduce the dairy price supports. The 243 Members voting with the dairy lobby received over $1 million from three major dairy PACs in 1978 and 1980, averaging $4,271 each. Members who voted against the dairy lobby, in contrast, received only $109,000 in dairy money in 1978 and 1980, averaging $718 each.

Given the "arms race" that exists today in the PAC world, Members of Congress are bound to become more and more dependent on PAC giving, and the impact of

PACs is bound to grow. Congressional policy in key areas will become more responsive to those interest groups able to give the most money. More and more, it will be the PACs of America that are represented in Congress—not the citizens.

A fundamental restructuring of the congressional financing system must ultimately occur. Comprehensive reform of congressional campaign financing—a completion of the election reforms begun in the 1970's—must include a system of partial public funding for congressional campaigns. Such a system will provide an alternative source of campaign funds, magnify the importance of small individual contributors, curtail the advantage enjoyed by wealthy candidates and enhance the opportunities of challengers.

If Congress is not prepared to deal now with public financing of congressional races, it should move quickly to deal directly with the PAC problem by placing new restrictions on PAC giving.

This Committee has before it proposals to change the current individual and group contribution limits from a per election limit to an overall election cycle limit. While we believe that this adjustment is appropriate, we would urge the Committee to reduce the limitation on PAC contributions from the present $5000 per election to an overall limit of $5000 per election cycle. We strongly believe that an overall ceiling on PAC contributions to individual candidates needs to be imposed. In the last Congress the House passed—but the Senate did not consider—a measure which would have limited the total amount of PAC contributions which a House candidate could receive in any election. In this Congress, legislation has been introduced by Representatives Glickman (D-KS), Leach (R-IA) and Synar (D-OK) to limit the overall amount of PAC contributions which either House or Senate candidates could receive.

In determining an overall limit for Senate races, one possible approach would be to establish a range of limits for Senate candidates, based on population, with a minimum of $75,000 and a maximum of $300,000 in total contributions for any candidate from all PACs.

We have reached a critical state in the growth of the PAC movement in American politics. An overall limitation is needed to control the aggregation of PAC influence and to curb the growing dependence of U.S. congressional candidates on PAC dollars.

INDEPENDENT EXPENDITURES

In the 1976 and 1978 campaigns, so-called independent expenditures were relatively minor features in the federal election landscape. In 1980, however, independent expenditure efforts took on a new significance, with more than $14 million spent on federal election campaigns, including $1 million spent on Senate campaigns. A significant number of new independent groups as well as previously existing ones are already raising funds for the 1982 election.

These activities are creating a basic threat to the integrity of the political process. Terry Dolan, Chairman of the National Conservative Political Action Committee, and a leader of the independent spending movement has said, "A group like ours could lie through its teeth, and the candidate it helps stays clean." Richard Richards, the Chairman of the Republican National Committee, has said that independent spenders "create all kinds of mischief," adding that "If campaigns are going to be honest, the candidates have to be responsible for everything that is done." Mr. Richards' testimony last week before this Committee again underscored his concerns about these efforts.

Political columnist David Broder has written, "The din of negative advertising" which independent expenditure groups so frequently use "does tend to denigrate and drown out the healthy debate between candidates and parties that ought to be the heart of any campaign."

The activities of NCPAC and other independent spenders are undermining the concepts of fair competition and accountability that are so basic to our political process. Congress needs to act and act quickly to deal with the problem.

In *Buckley* v. *Valeo,* the Supreme Court declared unconstitutional a broad provision restricting independent spending by all individuals and groups in any federal election. In *Common Cause* v. *Schmitt,* the Supreme Court is now considering whether another provision that limits independent spending by political committees on behalf of candidates accepting public funds is constitutional.

In the 1976 amendments to the FECA, Congress generally defined "independent expenditures." Based on activities that have taken place since then, and questions that have arisen about the true independence of some of these expenditures, we believe that Congress should further clarify and spell out the standards to be used in assessing the independence of an expenditure campaign

The recent announcement, for example, by Edward J. Rollins, Deputy Assistant to the President, that he intends to meet regularly with the National Conservative Political Action Committee to discuss the 1982 elections demonstrates the need for statutory clarification in this area.

We would also like to propose amending the federal communications statutes to give any candidate faced with an independent spender's advertising campaign on television or radio an equal amount of free broadcast time.

This provision would serve to protect the integrity of the present system of contribution limits by assuring that a candidate could respond without heavy expense to an independent expenditure campaign involving that candidate. The inequitable influence now being exercised by independent spenders on our political system would be substantially relieved.

Precedents exist for this kind of remedy. In one case, the Supreme Court upheld a federal requirement giving free response time to any individual whose personal integrity was attacked in a broadcast. And recently the Court upheld another federal law designed to assure that candidates for federal office have a right of reasonable access to broadcast stations. We urge Congress to create a right of free response time as a means of addressing this serious problem.

FEDERAL ELECTION COMMISSION

The establishment following Watergate of an independent agency to oversee and enforce campaign finance laws was an important turning point in the political history of the nation. For the first time, enforcement of campaign finance laws has become a reality. The FEC's enforcement capability has been the major reason campaign laws are now taken seriously and has resulted in a strong record of voluntary compliance with those laws.

In this Congress we have seen repeated attacks on the FEC. Some would abolish the Commission and return enforcement to the Justice Department. Yet the Department's prior record in this area is extremely poor. The Tillman Act, the Federal Corrupt Practices Act, and the Federal Election Campaign Act of 1971 all relied on the Justice Department for enforcement—and that enforcement was meaningless. There is no reason to assume that anything would be different today if the Justice Department were given this responsibility again, particularly in light of the increasing pressures to cut back spending that face Justice and all other agencies.

The crusade to abolish the FEC does not appear to us to arise out of a concern for better enforcement of the election laws—the remedy proposed is almost certain to result in less enforcement. We strongly applaud the steps taken by the leaders of this committee, Senator Mathias and Senator Ford, to oppose efforts to abolish the FEC.

Common Cause's continuing strong belief in the need for an independent agency to oversee and enforce campaign finance laws does not mean we believe the Federal Election Commission has functioned perfectly. Significant problems have arisen at the Commission and legitimate concerns have been raised about the performance and management of the agency. In a recent study of the FEC, Common Cause outlined ten general areas of complaints about the Commission and made 22 recommendations for improvements. We would like to submit for the record a copy of that study, entitled "Stalled From the Start."

Most important of those recommendations is the need to establish a stronger management system. The present structure of a rotating one-year chairman, and the blurred senior staff structure where no one has primary responsibility for day-to-day management, have severely hampered the FEC. Improvement can and must be made in that structure if the FEC is to perform better in the future.

In the critical area of disclosure, which even campaign finance reform's strongest foes claim to support, the Commission has yet to make information available in a sufficiently timely and usable fashion for wide public dissemination. Unless strong steps are taken to ensure that the important disclosure role is not neglected, the present budget cuts may only serve to worsen the situation.

Candidates for public federal office should value the unique and irreplaceable role the FEC plays in protecting the integrity of the election process. That role would not be a serious one if it were not for the enforcement duties which accompany the FEC's other oversight functions.

OTHER CHANGES

There are additional adjustments and alterations in the Federal Election Campaign Act which this Committee is considering that we would like to address. Among those changes which have been suggested are the following:

Contribution limits.—We believe that effective contribution limits are an essential ingredient of any campaign finance law. The amount of the present limit, $1000 per election, is extremely high when one thinks of the capacity of most people in this country to make such contributions.

Various proposals have been made to increase the limits on individual contributions, some based on the desire to account for the inflation that has occurred since the limits took effect in 1975. We are strongly opposed to any substantial increase in these limits.

Congress needs to recognize the potential for inappropriate influence and access which still go with larger individual contributions. While PAC money generally is more likely to be tied to organized lobbying efforts than individual contributions, larger individual contributions can be, and in the past often have been, money given for a particular purpose. The higher the individual limit, the greater is the potential threat to the integrity of the political process.

An increase in the individual contribution limit will not expand the overall pool of individual contributors. Larger individual contribution limits are not going to free congressional candidates from the growing role and influence of PAC contributors. An increase in individual contribution limits will not in itself solve the growing problem of independent expenditure efforts.

Senator Mathias has proposed that contribution limits be switched from a per election to an overall election cycle. We support this change. We also would support an inflation adjustment raising individual contribution limits for an overall election cycle to $3,000, but only if it is done as part of a comprehensive approach which specifically addresses the problems of PAC giving and spending that are discussed earlier in our testimony.

We oppose efforts to increase the individual and PAC contribution limits on gifts to political parties. The base of support for the national parties should be broad, not narrow; the success of recent Republican Party fund-raising efforts has appropriately come through the development of a large list of small contributors. Increasing the already high contribution limits to party committees will not measurably increase the amount of money which parties can raise and will only raise the specter of undue influence for a few.

Similarly we believe that no legitimate public policy goal would be served by increasing the current aggregate $25,000 individual contribution limit. This limit, it should be remembered, is greater than the annual income of an average American family; a change in the statute will only be of benefit to Steward Mott, Clement Stone, and a relatively few other "fat cats" and would provide minimal additional funds for the political process.

We would also oppose the proposal to waive contribution limitations in elections in which candidates spend more than $35,000 of personal funds. The appropriate remedy for the increasing problem of the use of personal funds in our view is public financing--and not the effective repeal of important election safeguards.

We were pleased to note that the Mathias proposal includes a provision removing the grandfather provision in the FECA which allows individuals in the Congress, as of January 8, 1980, to convert excess campaigns funds for personal use. This Committee has long recognized the possible dangers and abuses in this use of campaign funds and has been in the forefront of efforts to eliminate this practice by statute. We urge the Committee to try once again to close this campaign finance loophole.

Reporting and disclosure requirements.—Proposals have been made to increase the itemized reporting thresholds for contributions and expenditures. The identification of sources of campaign funds is one of the key elements of the disclosure provisions of the FECA. The reporting threshold was doubled in the 1979 amendments from $100 to $200. We are opposed to any further increases in this threshold. Information on contributions of more than $200 is likely to be kept by almost all campaigns regardless of whether it has to be reported and is therefore easily disclosed. We do not believe that a case has been made for increasing this reporting threshold.

We would agree that some increase in the threshold for itemizing of campaign expenditures is appropriate. This information can be more burdensome for campaigns to maintain and categorize and is of less significance than contribution disclosures to the overall goals of the Act.

We would also support a proposal advanced by Chairman Mathias to expand the reporting requirements for corporations and labor unions. Under existing law these organizations may undertake three types of campaign activity: nonpartisan registration and get-out-the-vote activities; communications to members or stockholders advocating the election or defeat of a candidate; and the establishment of a separate segregated fund. At this point, however, only one of these three costs is reported—the expense (if over $2,000) of urging members or stockholders to vote for or against a particular candidate. The Mathias proposal would require reporting of all three types of labor and corporate activity. The disclosure of this information, which should also be subject to reasonable threshold reporting requirements, would provide a much more accurate picture of the costs of the political activities of these organizations.

We further support the proposed increases in the reporting threshold for candidates from $5,000 to $10,000 and for political committees from $1,000 to $2,500.

CONCLUSION

In conclusion, Mr. Chairman, we believe that the types of changes we have discussed in our testimony must be made if we are to complete the reform of the federal election process which was begun in the last decade. We believe that the issues involved here are of vital importance to the credibility of Congress and the well-being of the political process. We stand ready to assist this Committee in any way we can.

The CHAIRMAN. Our final witnesses today are Mr. J. Robert Brouse, president of the National Association for Association Political Action Committees, accompanied, the Chair notes, by Senator Taft, and Mr. Joseph J. Fanelli, president of the Business-Industry Political Action Committee.

STATEMENTS OF J. ROBERT BROUSE, PRESIDENT, NATIONAL ASSOCIATION FOR ASSOCIATION POLITICAL ACTION COMMITTEES, ACCOMPANIED BY ROBERT TAFT, JR., TAFT, STETTINIUS & HOLLISTER, COUNSEL; AND JOSEPH J. FANELLI, PRESIDENT, BUSINESS-INDUSTRY POLITICAL ACTION COMMITTEE

Mr. BROUSE. Senator, I am J. Robert Brouse, president of the National Association for Association Political Action Committees. With me is Robert Taft, Jr., whom you know, of Taft, Stettinius & Hollister, counsel to our association. I would also like to point out that our association treasurer, Jerry Wilkinson, of the International Franchise Association, is sitting to my right, behind me; he is here today. Before we begin we would like to thank Senator Mathias for his efforts in holding these hearings on revisions to the Federal Election Campaign Act of 1971.

We support his effort to eliminate inequities in the current act, and we believe that this bill, S. 1851, will improve the act. In this oral testimony I hope to explain the problems confronting my organization in a more concise fashion than the written statement submitted to this committee. I therefore request that my written statement be included in the record.

The CHAIRMAN. Without objection, let me say to both of you, your written statements will be included as if read.

Mr. BROUSE. Thank you. The members of NAFAPAC are trade associations representing, in some cases, hundreds of member corporations located throughout the United States. Additionally, we have been authorized to speak on behalf of a number of trade associations who are not yet members of NAFAPAC but who are vitally interested in reforming the act to lessen its discriminatory and burdensome limitations on solicitation by trade association PAC's. A list of those trade associations whose views we represent is attached to my written testimony for the record.

We feel that the act's goal, that is, the elimination of corruption in the Federal election process, is an admirable one, and we support it. However, in the 1976 amendments to the act, certain restrictions were placed on trade association PAC's, whose members happen to be corporations, which are not placed on other association PAC's whose members are individuals, such as the American Bar Association.

These restrictions have placed an undue administrative burden on trade association PAC's in their efforts to solicit contributions. Trade association PAC's, unlike professional association PAC's, are required to obtain advance written permission from any member before soliciting contributions from the stockholders or the executive or the administrative personnel of that member corporation. In addition, this permission must be obtained annually.

The CHAIRMAN. That, if I may interrupt you, is where we ran into the problem with Land O' Lakes, that that is clear in the case of a corporate member but not in the case of a corporate cooperative.

Mr. BROUSE. Right, that's correct. I think we once patronized the same Southern cooperative, and I didn't realize I was a member of that cooperative until I got my dividend check, too, one year.

The CHAIRMAN. I find it out when I get my bills.

Mr. BROUSE. The practical result of these solicitation restrictions has been to cause duplication of administrative costs associated with raising money, so much so that it sometimes costs our members approximately 20 to 40 percent of the amount eventually raised simply to receive this permission every year.

Many of our members are trade associations composed of large numbers of small corporations. Each corporate member may have only 3 to 10 eligible contributors. The smaller corporation officers are not highly sophisticated about the requirements of this act, and therefore a great deal of time and money must be spent by the PAC in educating them. In some cases the approval will not be received by the PAC until November, way too late to make any successful solicitation contacts with the 3 to 10 eligible contributors. Then in January the PAC must request solicitation approval again. Now, when this happens, the corporate officer may not even respond to the first several renewal contacts, because in his mind he has already given that permission. Usually a personal phone call is necessary, sometimes a visit, to explain that the approval was only valid for 1 calendar year and that new approval must now be received.

We believe that there is no justifiable reason for placing these solicitation limitations on trade association PAC's. We therefore request that the act be amended so that we are treated in the same fashion as professional association PAC's, and such equality of treatment would greatly reduce the costs and administrative burdens on trade association PAC's, and, very importantly, would encourage broad participation in Federal elections, which is one of the purposes of the act.

Senator Mathias has, in section 27 of S. 1851, recommended removal of the requirement that solicitation approvals be renewed every year. This change is consistent with the recommendations of the Federal Election Commission in its 1980 annual report. And we heartily support it. We believe that it is a large step forward in equalizing the treatment of trade association PAC's.

Additionally, we have attached a proposed amendment to our written statement which we urge this committee to adopt. Our amendment would allow a trade association PAC, at the association's annual meeting, to solicit contributions from any individual in attendance. At the moment such solicitations are prohibited because inevitably there will be some individuals at that meeting whose corporations have not yet given their current approval of solicitations by the PAC on file. We do not feel that there is any justification for this prohibition. It is the individuals who attend our trade associations, not the corporation, not brick and mortar. While there may be at some levels concern about solicitation of corporate personnel, that concern simply is not justified in this situation. Typically, those individuals who attend trade association annual meetings do so voluntarily; they are usually senior executives who are actively interested in and concerned about issues confronting their company and their industry. We should be able to tell those individuals that their trade association has a PAC, and if they want further information about the PAC how they can obtain it. Under current regulations, we are in the anomalous situation that if a trade association allows a PAC booth at the trade association annual meeting, and two members—if you can picture this—two members of the association come up to the booth for information, the person at the booth must talk to only that one to whom advance solicitation has been sought and received, and cannot talk to the other one at the same time.

Similarly, though many trade associations typically have a PAC reception during their annual meeting, no mention of the PAC reception may be made either in oral announcements or in the written agenda of the annual meeting. It is fairly silly, Senator.

These prohibitions on communications have a chilling effect on all forms of group communication regarding the PAC. There is no compelling reason to place solicitation limitations upon a trade association PAC, and if we had our 'druthers, we would prefer to eliminate altogether the solicitation section in that act. If this committee cannot support that proposition, we urge you at least to amend 441b(b)(4)(D) to allow solicitation at a trade association's annual meeting of all persons attending the meeting without regard to prior approval by the individual's corporation. We further urge you to support section 27 of S. 1851, providing that the corporate solicitation approvals will remain valid until revoked.

I appreciate the opportunity of having been allowed to testify before you and this committee. I would like to request that the record be held open for receipt of individual written comments from my association members. I would be glad to answer any questions, if I can.

[The prepared statement of Mr. Brouse follows:]

PREPARED STATEMENT OF J. ROBERT BROUSE, PRESIDENT, NATIONAL ASSOCIATION FOR ASSOCIATION POLITICAL ACTION COMMITTEES

I am J. Robert Brouse, President of the National Association for Association Political Action Committees. With me is Robert Taft, Jr. of Taft, Stettinius & Hollister, counsel to our Association. We would like to thank Senator Mathias for his efforts in holding these hearings on revisions to the Federal Election Campaign Act of 1971. We support his efforts to eliminate inequities in the current Act and believe that his bill, S. 1851, will improve the Act.

The members of NAFAPAC are trade associations representing, in some cases, hundreds of member corporations, located throughout the United States. NAFAPAC is not itself a contributing entity, nor does it have a PAC. It is an educational organization which seeks to aid trade associations in the establishment and operation of their PAC's. Additionally, we have been authorized to speak on behalf of a number of other trade associations who are not members of NAFAPAC, but who are, however, vitally interested in reforming the Act to lessen its discriminatory and burdensome limitations on solicitation by trade association PAC's. A list of trade associations whose views we represent is attached to this testimony as Exhibit A.

We feel that the Act's goal, elimination of corruption in the Federal election process, is an admirable one, and we support it. However, certain provisions of the 1976 Amendments to the Act have placed severe, arbitrary, and burdensome restrictions on trade associations' PAC operations. These provisions are contained at 2 U.S.C. § 441(b)(4)(D).

Section 441(b)(4)(D) places an undue burden on trade association PAC's in their efforts to solicit contributions. This provision, read in context with the rest of the Act, requires a trade association PAC to have advance written permission from any member corporation before that association's PAC may solicit contributions from the stockholders or the executive or administrative personnel of the member corporation. In addition, this permission must be obtained annually and may only be given to one trade association in any year. Finally, trade associations are prohibited from making general announcements, verbally or in writing, informing attendees at a trade association's annual meeting of the existence of an association PAC and of the means by which that individual may acquire more information about them PAC.

The problem arises in those trade associations that have great numbers of smaller corporate members. Hundreds of thousands of small independent businesses are incorporated in this country solely for tax and liability reasons. Having incorporated, these corporations are now treated for Federal Election Act purposes in the same way as such corporate giants as General Motors or Exxon.

As we stated, the Act presently requires that, before the executives, managers, or stockholders of a corporation may be solicited to contribute to a trade association PAC, the corporation must grant its approval for solicitation—each calendar year. For a General Motors or an Exxon such an approval executed by one officer could cover 100,000 or more potential contributors and poses little or no problem administratively for that corporation's PAC. But for a trade association PAC with several thousand corporate members (many of which might have only three to ten eligible contributors each), the requirement for a separate and specific annual approval to solicit before the potential contributor can be asked to contribute is an unnecessary and expensive administrative burden. Further, it inhibits the entire process of broadening the number of personal campaign contributions and discourages the establishment of PAC's, thereby undercutting one major purpose of the Act. Professional association PAC's are not subjected to these restrictions. Just as with professional associations, it is individuals, not corporations, who attend trade association annual meetings and who decide whether or not to contribute to their PAC. There is no justifiable reason for restricting the solicitation activities of trade association PAC's while allowing professional society PAC's to solicit freely. We therefore urge that the present restrictions on trade association PAC's be removed, and that we be subject to the same solicitation rules as professional association PAC's.

At Section 27, S. 1851 has taken a large step toward equalizing the treatment of trade association PAC's: removal of the requirement that each solicitation approval be renewed each year. In his introductory remarks, Senator Mathias cited the recommendation of the Federal Election Commission in its 1980 Annual Report, that this annual renewal requirement be deleted from the Act. The Commission recommends, and Section 27 provides, that once approval is given, the trade association PAC will be allowed to solicit until a corporation revokes its approval. This change specifically recognizes the "considerable administrative burden to obtain approval to solicit every year." We could not agree more. In some instances, particularly early in a trade association PAC's existence, two-thirds of the PAC's resources may be consumed in the process of requesting permission to solicit, only to receive such permission so late in the year that no successful contribution campaign can be waged prior to January 1, which triggers a new solicitation approval process. We applaud Senator Mathias' deletion of this requirement, and we urge your support for Section 27.

In addition, we have attached a proposed amendment allowing a trade association PAC, at the association's annual meeting, to solicit contributions from any individual in attendance. This amendment is attched to this testimony as Exhibit B. We believe this distinction from the general prohibition against solicitation of corporate personnel without prior written corporate approval is justified by the type of individuals who attend trade association annual meetings. An association annual meeting is very different from a mass solicitation mailing to executive and administrative personnel and stockholders and their families. Typically, those individuals who attend trade association annual meetings are senior executives who are actively interested in and concerned about issues confronting their company and their industry. Under current law, the Commission has advised members of our association that they may not even announce the fact that their trade association that they has a PAC or where further information concerning the PAC may be obtained if the announcement is made in connection with an annual meeting. This prohibition exists because, inevitably, there will be some individuals at the meeting whose corporations do not have a current approval of solicitation by the PAC on file. To deny such a sophisticated group of individuals who have voluntarily chosen to attend the trade association's annual meeting access to information about the association's PAC and the opportunity to contribute serves no useful purpose and is an unwarranted intrusion on those individuals' rights to free assembly and to free access to information and ideas. Additionally, the prohibition on communication with attendees whose companies have not authorized solicitation prior to the event has the effect of "chilling" all forms of goup communication regarding the PAC. Any communications regarding the PAC must be strictly limited to individuals whose companies have filed such solicitation authorizations. This, in order to avoid any appearance of soliciting ineligible contributors, the PAC is in effect prohibited from soliciting except through very expensive, narrowly focused and duplicative mailings. Finally, there is no compelling reason to prohibit such solicitations if a trade association happens to have corporate members but to allow it where all memberships are individually held.

In conclusion, we urge you to support Section 27 of S. 1851 providing that corporate solicitation approvals will remain valid until revoked. We further ask that section 441b(b)(4)(D) of the Act be amended to allow solicitation, at a tade association's annual meeting, of all persons attending the meeting without regard to prior approval by the individual's corporation. Neither of these proposals would undermine the purposes of the Act. Both would reduce the present statutory discrimination against trade association PAC's with corporate members, thereby lessening the costs and administrative burdens of compliance with the Act, while at the same time encouraging broad individual participation in the Federal election process.

EXHIBIT A

Association of the Wall & Ceiling Industries—International,
American Society of Association Executives,
National Association of Realtors,
International Franchise Association,
Independent Insurance Agents of America,
National Federation of Independent Business,
Direct Selling Association,
American Apparel Manufacturers Association,
Ohio State Medical Association,
National Utility Contractors Association,
National Association of Wholesale/Distributors,
National Restaurant Association,
Association of American Publishers, Inc.,
United States Brewers Association,
National Tire Dealers and Retreaders Association,
Air Conditioning Contractors of America,
National Air Transportation Association,
Service Station Dealers of America,
Credit Union National Association,
American Osteopathic Hospital Association,
Electronic Industries Association,
National Constructors Association,
Animal Health Institute,
National Association of Truck Stop Operators,
American Consulting Engineers Council,

American Bakers Association,
Independent Bankers Association of America,
Associated Equipment Distributors,
Potato Chip/Snack Food Association,
Mortgage Bankers Association of America,
The Associated General Contractors of America,
Mortgage Insurance Companies of America,
Motion Picture Association of America,
National Office Products Association, and
Society of American Florists.

EXHIBIT B

Amend Section 316(b)(4)(D) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441b(b)(4)(D) as follows: by adding after the first use of the word "soliciting" the following: "at the trade association's annual meeting, contributions from any individual who attends the annual meeting. Nor shall this paragraph prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from".

The CHAIRMAN. We will hold the record open for several days, and we would be glad to have additional material. In addition, Senator Ford, I know, wanted to address questions to you and Mr. Fanelli, so we will also provide for those questions and your responses. Mr. Fanelli?

Mr. FANELLI. Thank you, Mr. Chairman. I am Joseph J. Fanelli, president of Business-Industry Political Action Committee, and I appreciate the opportunity to appear before the committee for the purpose of offering some comments concerning revision of our election laws. With me here today is Bernadette A. Budde, who is director of BIPAC's political education division. She is seated to my right in the front row.

I have supplied the committee with copies of my written statement, Senator, and I would appreciate having it appear in the record of these proceedings.

The CHAIRMAN. So ordered.

Mr. FANELLI. With your permission, I will summarize these remarks.

BIPAC is an unaffiliated or nonconnected political action committee founded in 1963 to support candidates dedicated to the preservation of our free enterprise economic system and our individual liberties. Because of our role and our long history, BIPAC often finds itself speaking in behalf of corporate PAC's generally, and, to some extent, business-related association PAC's as well.

Before proceeding with some comments on possible changes in the election laws, I would like to bring to the attention of the committee some data developed in an informal survey conducted by Civic Service, Inc., and devised by BIPAC in collaboration with the National Association of Business Political Action Committees, the National Association of Manufacturers, and the Public Affairs Council. A total of 275 corporate PAC's responded to this informal survey and a summary of their responses is attached to my statement, which I have submitted to the committee.

The material confirms my belief that the PAC movement has served to strengthen the democratic process in the United States, a point which the Chairman spoke of just a moment ago. A few of the highlights of the survey are as follows:

More than 100,000 individuals contributed to the PAC's which responded to the survey, and for many this was their first real act of political involvement.

PAC solicitations have helped to broaden the base of political financing, and the average contribution, determined by those responses that we received, was just over $80 a year.

The decision process for deciding which candidates will receive PAC support involves many PAC members, and most PAC's encourage suggestions and recommendations from those who give to it.

PAC support is bipartisan: 69 percent of these contributions to federal candidates went to Republicans, and 30 percent to Democrats.

PAC support can encourage the entry of new candidates into the political competition. Almost one-half of these contributions went to challengers and open-seat races.

These contributions derive from voluntary action by management personnel. About two-thirds of eligible participants are solicited, and about one-third of those solicited actually contributed.

Corporate PAC's usually are a part of overall public affairs programs devoted to political, legislative, and economic education for employees.

Having said all of this to demonstrate the vitality of PAC's, I must add that there are areas where changes in the law could allow for improved operations. The accounting and compliance expenses continue to be a burden on PAC's. Changes which would help to relieve that burden without jeopardizing the public's right to have full and complete information which might be pertinent to their choices between candidates would improve PAC efficiency and allow greater assistance to candidates. In this connection, the provision in S. 1851 to raise the threshold for reporting receipts and expenditures from $200 to $500 would be an important step forward. We support that proposal, as included in your bill, Mr. Chairman.

We also endorse the suggestion made to the committee last week by Representative Bill Frenzel of Minnesota that the section 441(b)(2) exemptions be extended to nonconnected PAC's. Another provision of S. 1851 which we would endorse applies to association and membership PAC's; it would remove the requirement that an association PAC require annual approval from a corporation to permit solicitation of the corporation's employees.

In my written testimony I suggest some other areas which the committee might explore, such as allowing smaller associations and companies to adopt an existing PAC and thus form a special relationship with that PAC rather than take on an administrative burden and expense of forming its own PAC.

Another possibility concerns removing current provisions which tend to create a caste system among employees. We also support a revision upward of contribution limits to adjust for the inflation we have experienced in our overall economy.

Finally, we support the continuation of the Federal Election Commission, with its basic responsibility of collecting and disseminating information about campaign finances.

I would be glad to respond, or try to respond, to any questions you may have, Mr. Chairman.

The **Chairman**. Thank you, Mr. Fanelli. In your comments just now, you said that what made the PAC contributions valuable was because they were part of an overall process of I believe you said solicitation, education, and legislation.

Now, of course, that is precisely what Mr. Wertheimer said he felt was bad about them, that they had an added degree of influence because they were part of an overall process.

Mr. **Fanelli**. Well, I would respectfully have to disagree with Mr. Wertheimer's appraisal of this process to which you allude. What we are talking about here is educating and motivating individual Americans with regard to the political process in this country, the economic process in this country, and the legislative process in this country. And if Mr. Wertheimer objects to that, I am sorry; then I don't think his reasoning is consistent with what this system of ours is all about.

The Chairman. Do you want to comment on that?

Mr. **Brouse**. Yes, Senator. I would just like to point out that when a citizen makes a contribution he has various ways to make it. One of the alternative methods is through his PAC. I really see no difference in offering that alternative, that is, making a contribution through a PAC and increasing his clout that way, than by making his contribution to his union, his corporation, or his Common Cause Organization.

Obviously a member of Common Cause has increased his clout considerably through his contribution and participation in that special interest group. I think it is perfectly consistent, and I don't think the word healthy versus unhealthy has any part in the lexicon of PAC's.

The **Chairman**. Well—and I address this to both of you—do you believe that there is a valid public policy served in the general concept of limiting appeals for PAC contributions to persons having some kind of particular associational ties with the organization? And I think this goes to this very question of whether it is sort of an overall process. Is it a good idea to confine trade associations to their membership for PAC support, people who would have the same common interests and theme in their political activity?

Mr. **Fanelli**. Well, I would offer the opinion, Senator, that there is some logic to establishing such limitations. However, I do note that within the law any PAC that is formed by a corporation or an association or a labor union or any other entity, for that matter, may accept contributions from outside that universe, but it may not solicit from outside its universe. So there is not a strict limitation, but I think there is a logic to establishing the parameters for these respective organizations.

The **Chairman**. Now, most major trade associations have some presence in Washington, either continuous and permanent or on a repeated basis, in order to represent their industries both before Congress and before the executive branch.

Do you think therefore that contributions by these organizations have a greater likelihood of influencing legislation in some improper way?

Mr. **Brouse**. Senator, I would like to suggest that——

The CHAIRMAN. That's a kind of second approach at Mr. Wertheimer's approach.

Mr. BROUSE. That's what I meant by not using the words healthy or unhealthy as proper terms. I think that when you exercise your rights as a citizen through an organization, you do so voluntarily; it is not mandated, you are not required to do it. It is a way of expressing your views and finding friends who feel likewise and sharing the cost of expressing those views.

And I think that is an important freedom that we ought to have and retain. I don't think that it should be denied to any trade association or to Common Cause.

Mr. FANELLI. I would agree. The same principle applies, of course, to political parties where individual contributors who adhere to the Republican philosophy or the Democratic philosophy or the philosophy of any other party, are given the prerogative of joining together to support candidates who espouse those particular views. And I don't see anything intrinsically wrong or contradictory in that option that parties have, and the same privilege ought to be allowed any citizen or citizens who may wish to group together for a particular objective.

Mr. BROUSE. I was kind of reminded, as I listened to Mr. Wertheimer, of Senator Long's famous—I don't know whether he originated it, but he used to enjoy saying it—phrase about tax reform: "Tax reform is not for me, it's for the man behind the tree."

Senator FORD. I think it was Uncle Earl who said that. [Laughter.]

The CHAIRMAN. Now, the latest FEC figures on contributions by PAC's of course are not complete—I think they only go through mid-October of 1980, so we are dealing here with some degree of ignorance. But up to that time it shows that preelection 1980 PAC contributions were about $15 million for congressional races, House and Senate.

Do you know what portion of these contributions would come from the kind of trade associations that you represent?

Mr. FANELLI. I have some figures on that, Senator, which may be a little more recent, from an FEC press release, August 4, 1981, covering the 2-year period 1979–80 which shows that in House and Senate races corporate PAC's contributed $19.2 million and trade membership and health association PAC's contributed $16.1 million. Percentagewise, for overall PAC contributions, corporate PAC's contributed 7.6 percent and trade membership and health PAC's contributed 6 percent of the overall contributions by PAC's to House and Senate races.

The CHAIRMAN. Well, that's a better breakdown than the one I had.

Mr. FANELLI. This is predicated on an FEC press release of August 4 of this year.

The CHAIRMAN. Now, one final question. The FEC has generally sanctioned corporations and labor organizations spending general Treasury funds on three political functions: establishing, administering, and soliciting contributions to a segregated separate fund; second, registration and the kind of effort that goes into a get-out-the-vote drive; and, third, internal communication among the members or the work force expressly advocating the election or defeat of candidates.

And these have been deemed by FEC not to be contributions within the scope of the act.

Now, two of these three categories don't even have to be reported. A provision that we have suggested in the bill that I have introduced as a vehicle for discussion would bring these administrative and solicitation costs under the reporting requirements.

Now, that could make a difference to many of the associations and to the members of those associations, and I am wondering how you feel about that particular proposal.

Mr. **Brouse**. Senator, our organization, NAFAPAC, has not taken a position yet on that provision nor can I speak for the members of the coalition. But I would be happy to put the question to them when we meet on December 7, and get that information back to you.

My personal view, in talking with members of both the coalition and the association is that most of them keep close track of those expenditures now, and while it would be another administrative burden, an additional one, it is not something that is difficult for them to produce, as long as it doesn't get down to nickles and dimes, I suppose; there must be a reasonable threshold amount in dealing with that disclosure provision.

Mr. **Fanelli**. With regard to that additional proposed disclosure, Senator, I think our dealings with corporate PAC's and business-related association PAC's suggest to us that if there is one element on which most agree, on the value of the Federal Election Campaign Act of 1971 and the Federal Election Commission as an institution, it is that disclosure is the heart and soul of the value of the law and the regs as they exist now.

On the other hand, if you are proposing we go further than that, I think some elements have to be considered—for instance, do we want to add another layer of recordkeeping and reporting to the already existing process that presumably is overburdened, as evidenced by the testimony that has been presented to this committee.

Also, I suspect, without thinking it through in great detail, but with my knowledge of what corporate public affairs programs are all about, it's a process that is integral in several facets. It includes economic education, legislative education, political—and these programs overlap a great deal; they are usually administered under one or two corporate executives, and it seems to me it might be a little difficult for some of the corporations—maybe many—to effectively and accurately delineate which activities relate specifically to the company or association PAC.

So there would be some difficulty probably. It is not insurmountable, I wouldn't think. The principle of disclosure is agreed upon by all; I don't know of anyone really, over the last 10 years, or 15 years, that I have heard argue against the principle of disclosure. But I only wish to point out some of the difficulties that may ensue if that is actually passed into law.

The **Chairman**.. Thank you, Mr. Fanelli. Before I yield to Senator Ford, let me say that Mr. Lawrence Gold, the general counsel for the AFL-CIO, was scheduled to testify today, but, unfortunately, he notified us yesterday that he would be unable to appear.

But without objection we will grant to him, and to any members of the committee who may wish to do so, the privilege of submitting a statement for the record, if it is in our hands within 10 days.

Is that agreeable?

Senator **Ford**. Yes.

The **Chairman**. We will also include in the record a written statement, at the conclusion of the questioning of the present witnesses, by Mr. Craig Brightup, director of legislative and political issues of the Chamber of Commerce of the United States.

Senator Ford?

Senator **Ford**. Thank you very much, Mr. Chairman. I apologize for having to be away, but I had to be on the floor for a little while. I think the chairman has asked most of the questions that I had in mind.

As to the chairman's point regarding the reporting of funds for get-out-the-vote drives or registration drives, that sort of thing, shouldn't the stockholders and union members be aware of the cost of these items. Shouldn't there be some procedure in-house to notify your stockholders or notify union members that there is X amount of dollars that went into this political arena that did not go directly to candidates?

[Senator Ford assumes the Chair.]

Mr. **Fanelli**. Some corporations have already done so, even without any pressure from stockholders.

Senator **Ford**. I understand.

Mr. **Fanelli**. But certainly the stockholders would have the prerogative of requesting that information, and I would think where there is such an interest, even on the part of one activist individual, the chances are the corporation would respond to that request.

It is a question for further consideration as to whether you would want to necessarily force corporations, associations, and labor unions into that particular requirement.

Senator **Ford**. You are representing here this morning basically business-oriented PAC's, am I correct in that?

Mr. **Fanelli**. Correct.

Senator **Ford**. How do you feel—and I address this to both of you gentlemen—how do you feel about noncandidate, independent PAC's?

Mr. **Brouse**. NAFAPAC and the coalition that I am representing here today have not taken a position on the role of independent PAC's, and so therefore I really can't speak for them. I heard Mr. Richards yesterday, Friday, discuss his views on PAC's, and I saw that the newspaper incorrectly I think by omission indicated that he disapproved of PAC's, and he did not, as I understand it, disapprove of PAC's, only disapproved of independent PAC's.

Senator **Ford**. He thought it ought to be the responsibility of the party, and that the candidates and the party would have to labor under the issues rather than some outside source that wasn't as responsible politically.

Mr. **Brouse**. I thought it was important to make that correction for the record, Senator, but I wish I could be more straightforward and tell you my view on independent PAC's, but at this stage I can't—I could do that, but what you want to hear is what our organizations——

Senator **Ford**. Well, I wouldn't object to your personal views.

Mr. **Brouse**. My personal view is that those organizations serve a legitimate purpose and that they should be accorded the same constitutional freedoms that any other individual—any other group, philosophical, cultural, or religious, whatever, group under our system ought to be afforded.

Senator **Ford**. At what point do they leave the noncandidate independent arena and go into the candidate arena?

Mr. **Brouse**. I cannot say.

Mr. **Fanelli**. Senator, may I ask a question?

Senator **Ford**. Yes.

Mr. **Fanelli**. Your term of reference there is "noncandidate."

Senator **Ford**. They are referred to as noncandidate PAC's.

Mr. **Fanelli**. Nonconnected?

Senator **Ford**. Yes, nonconnected, independent PAC's.

Mr. **Fanelli**. I see. I originally interpreted your noncandidate phrase perhaps to refer to groups like antiabortion or ERA or those groups that may have a different classification.

Senator **Ford**. No.

Mr. **Fanelli**. So the term of reference is independent or unconnected or unaffiliated PAC.

Senator **Ford**. Yes.

Mr. **Fanelli**. Well, this gets back to the same basic principle we discussed earlier, that I think our system ought to permit and does permit, under the first amendment, the grouping of two or more individuals in whatever category to petition Congress for grievances.

I think the first amendment probably would protect the right of any two or more individuals to group together and to express their political preference with activity and with financial resources.

Senator **Ford**. We are dealing with the law, however, that permits a certain realm of activity, and beyond that realm you are treading into another field. One of the problems—and you alluded to that just a moment ago—noted by Chairman Richards when he said he was not opposed to PAC's, but that he was opposed to the independent PAC's because they had the ability to be for or against a candidate and say whatever they want to say about that individual without being accountable. The candidate himself is then faced with defending himself against that, in addition to his opponent, and that puts him at a great disadvantage. He wanted apparently to eliminate those independent PAC's and bring that influence into a party, one or the other, or an independent party and let the parties be the ones that defend or propose an issue.

That was in essence what I am trying to get at.

What I am very fearful of was raised in my discussion the other day with Mr. Kamenar, who raised the first amendment rights issue that you have raised. I asked him at what point maybe he left that free speech arena, and he said he didn't think we left it. But what about Mr. Rollins, who is the new political liaison for the White House, statement in Dave Broder's column—that, yes, he was going to meet with the so-called NCPAC's and independent groups, and they would exchange ideas, information, and discuss where each were going on a regular basis.

Well, that indicates to me that they are swapping information, whether it be polls about who can win or who could lose, or what's good in an issue, what's a bad issue, and that sort of thing, and once they get all their information combined, then they separate. One group works for a candidate; the independent one is out there just giving the other candidate the devil.

So really they are accomplishing two purposes, or a purpose in two different directions. One is damning the opponent while the other group went out and supports a candidate who opposes the one that they are damning. And I think he admitted at that point, maybe they would lose their standing as a so-called noncandidate or nonconnected PAC.

Would you all agree with that?

Mr. **Fanelli**. Well, first, the Supreme Court, in the *Buckley* v. *Valeo* case, of course, did validate for PAC's and individuals the right to engage in independent expenditures, so that is a fact.

Beyond that I think where there is this type of activity to which you allude, there are FEC regulations which do now provide or guard against proliferation of PAC's. And one of the elements that the regs deal with is this matter of communication between various PAC's, that where independent expenditures are engaged in, it is prohibited under the law and the regs for that PAC engaging in independent expenditures to have any prior counsel with or collaboration with the candidate or the candidate's committee. So, therefore, when such collaboration occurs, it is a clear violation of the law and the regs.

Also a proper enforcement of that existing regulation would be the answer there.

Also, if the nonproliferation clause in the current regs is considered to be somewhat loose now, it could be strengthened, so that it would be clearer on the part of those PAC's engaging in independent expenditures as well as the candidate, where they may or may not communicate.

Senator **Ford**. But you have touched on the crux of the matter. You said a candidate or his committee. But they talk to an individual, give the individual poll, discuss amounts of money that might be available to them in opposition and that they would spend it independently, and that sort of thing, all prior to the individual becoming a candidate. At that time they sever the relationship. It seems to me that we have to take that one step further. If they contact you, lay a professional poll down in front of you and say that you can beat X, and tell you that our committee will spend $225,000 damning your opponent, while they will assist in collecting funds for you directly and do all that prior to your filing for office, prior to your forming a committee, then under their interpretation they are home free. But for all practical purposes they have done everything the regulation says they shouldn't do, but this interpretation is based on a date.

I guess I am the whipping boy here on this one, but both sides are very concerned about the independent PAC's, and national leaders are very concerned about this too.

Mr. **Fanelli**. You can tighten up on the regs, Senator, on that one, because it is rather obtuse now. If you read that section on nonproliferation, I'll tell you you need a battery of Philadelphia lawyers to really try to even get to step one in interpreting it. So naturally that opens up a vast area for possible abuse.

Senator **Ford**. So we are getting to the point, then, that you think by regulation we could tighten it up a little bit?

Mr. **Fanelli**. On that particular type of activity, it is my opinion, yes.

Senator **Ford**. That would mean a recommendation to the Federal Election Commission or a change in the law, wouldn't it?

Mr. **Brouse**. Well, clarification—I think, as Joe points out, it is somewhat obscure right now, and you are fighting with that problem—it is obscure. It could be clarified.

Mr. **Fanelli**. Incidentally, just for the record, although BIPAC is unaffiliated, a nonconnected PAC—we never have engaged in independent expenditures, and we don't plan to.

Senator **Ford**. I understand that. I would not have asked you the question, I don't think, unless I took the liberty to ask these questions in both days of hearing. I regret I couldn't ask it of everybody else.

I have no further questions, and I am delighted you all were here. The chairman will not return, and we appreciate your being here very much.

[The prepared statement of Mr. Fanelli follows:]

PREPARED STATEMENT OF JOSEPH J. FANELLI, PRESIDENT, BUSINESS-INDUSTRY POLITICAL ACTION COMMITTEE

Mr. Chairman, I am Joseph J. Fanelli, President of Business-Industry Political Action Committee, usually referred to by its acronym, BIPAC. Founded in 1963, BIPAC has both a political education and a political action division. In both areas we are, of course, very much interested in campaign practices legislation, and we appreciate the opportunity to present some comments to you as the Committee begins consideration of possible changes in those laws.

This appearance here today is a rare occasion warranted by the fact that the legislation under consideration deals directly with BIPAC's existence and its operation. In the past we have appeared before the House Committee on House Administration when it was considering public financing of congressional elections. We also have been concerned at previous attempts to impose unwarranted limits on political action committee involvement in the political process.

At the outset I should explain that BIPAC is an unaffiliated or nonconnected political action committee. In our political education and political action efforts we seek to foster and to preserve the free enterprise system. We work with many business and industry leaders, including those involved with corporate and association PACs, but BIPAC itself is neither a corporate nor an association related PAC.

Unaffiliated PACs are sometimes referred to as "independent" PACs, but I have found that some confusion arises because some of these PACs engage in "independent expenditures." As the members of this Committee know, any political action committee—or any individual, for that matter—is permitted under the law to engage in independent expenditures, although the majority do not do so. Since the subject of independent expenditures has generated considerable controversy, it is important that the distinction be understood between independent PACs and the independent expenditures of some PACs.

BIPAC has not engaged in "independent expenditures" activity and has no plans to do so.

Because of our role and long history, BIPAC often finds itself speaking on behalf of other business-oriented PACs; often, it seems, explaining their purposes and operation. Particularly, we have tried to respond to some of the criticism directed at corporate PACs based on misunderstandings of their actual activities and misinterpretation of available data.

Before proceeding with some comments on possible changes in the law, I first would like to bring to the attention of the committee some material recently developed in a survey of corporate political action committees. The results shed a lot of light on PAC operations and I believe will serve to increase understanding and correct misapprehensions about the nature of PAC activities.

In the hope of better defining the role of PACs, this survey was devised by a group consisting of representatives of the Public Affairs Council, the National Association of Manufacturers, the National Association of Business Political Action Committees, and BIPAC. The survey was conducted by Civic Service, Inc. of St. Louis, Missouri. The questionnaire was sent to all corporate PACs except those related to banks and savings institutions, approximately 1,000 in number. A summary of the responses received is attached.

A total of 275 responses were received. This is a representative sample, especially as one considers that these 275 PACs raised $10.5 million in the 1979–1980 period, which would be almost one-third of the amount of money raised by all corporate PACs in that period according to FEC data.

What emerges from the study of these responses is the conviction that the PAC movement has served to strengthen the democratic process in the United States. That conclusion is supported by the following facts:

More than 100,000 individuals contributed to the PACs which responded to the survey; for many, this was their first real act of political involvement;

PAC solicitations have helped to broaden the base of political financing; the average contribution was just over $80 per year;

The decision process for deciding which candidates will receive PAC support involves many PAC members, and most PACs encourage suggestions and recommendations from those who give to it;

PAC support is bipartisan; 68 percent of these federal contributions went to Republicans; 29 percent to Democrats;

PAC support can encourage the entry of new candidates into political competition; almost one-half of these contributions went to challengers and open seat races;

These contributions derive from voluntary action by management personnel; about two-thirds of eligible participants are solicited, and about one-third of those solicited actually contribute;

PACs usually are a part of an overall public affairs program devoted to political, legislative and economic education.

Although this survey was limited to corporate PACs, I believe the major conclusions would apply also to association PACs. The survey data, incidentally, supports my own prior assessment of the importance of the PAC movement based on my own observation.

The survey data confirms what FEC statistics have shown: there is a great deal of vitality in the PAC movement. Believing as I do that there is great value to our democratic system in this area of generating more personal political participation, I would like to suggest some modifications in the law which would enhance PAC operations.

One of the most common complaints heard from PAC managers concerns the amount of paperwork made necessary by reporting requirements. Let me emphasize that this is not a matter of resistance to the full disclosure of their contributions. The disclosure of the sources of the candidates' campaign funds is the most effective means of dispelling some of the doubts and fears about campaign finances which have undermined public confidence in the electoral process. There is widespread support within the PAC community for full disclosure of PAC receipts and expenditures.

Unnecessary recordkeeping and reporting requirements are an administrative burden on all PACs. Reporting thresholds should be set at a reasonable level and kept abreast of the times. For example, PACs currently must provide identification to the FEC of all individual contributors of over $200 in a year. A similar requirement applies to those to whom expenditures or disbursements are made in amounts over $200. Setting a higher threshold would reduce some of the paperwork burden without seriously impairing the information available to the public.

I am glad to see a provision to increase that $200 threshold to $500 is included in the provisions of S. 1851.

With reference to individuals contributing to a corporate PAC, the solicitation of the PAC is limited to employees, shareholders and their families; personal identification by title, etc. of those making modest contributions hardly seems necessary.

Such changes could help to relieve the accounting and compliance expenses of PACs, which detract from the main purpose of political action committees, which is to assist candidates. We would hope that the Committee will give consideration to some form of relief for those PACs which do not currently have any way of handling such expenses except out of action dollars, which would be used only for direct contributions to candidates.

In this respect, I was pleased to note the recommendation in the testimony presented to the Committee by Rep. William Frenzel to extend the Section 441(B)(2) exemptions to non-connected organizations. This would allow such PACs to create a separate account to raise donations for administrative purposes, thus giving them equal treatment with corporate and labor organizations.

Another possibility for enhancing the opportunities for participation in the political action committee movement by small membership, association, labor and corporate entities would be to allow them to form a special relationship with another PAC. I am suggesting that rather than take on the burden and expense of forming their own PAC, they would participate through an "adopted" PAC. The existing PAC would thus have a broader base of support and probably a broader interest as its PAC objective. This would tend to reduce the proliferation of PACs, cut down on the administrative expenses of PACs, and enlarge the amount of money available for candidates.

Another area of concern for corporate PACs are the provisions in Sections 114.3 and 114.4 relating to communications with employees, which has made necessary the division of employees into two classes: managerial and non-managerial.

In some corporations, this is seen as creating an artificial and unnatural caste system; it may be especially noticeable in smaller companies. If the law were changed to permit solicitation of and communication with all employees, this unfortunate possiblility would be eliminated; it also would clarify some areas which now are hazy and subject to arbitrary interpretation by the FEC.

All of the dollar limits on contributions in the current law are out of date. The amount of legally permissible contributions have been greatly reduced because of the effects of inflation. They should be adjusted accordingly; but such adjustments logically should be applied to all such limitations.

Another provision in S. 1851 would allow trade associations to solicit contributions from corporate members after having acquired corporate approval until that approval is revoked, rather than requiring annual approval. The requirement to seek annual approval has hampered the solicitation efforts to trade association PACs and should be removed.

We have no comment to offer on the many questions concerning the operations and enforcement activities of the Federal Election Commission. We have been fortunate in our relations with the FEC; we have been able to meet the requirements of the law and of pertinent regulations without undue difficulties. We recognize that some believe the FEC should be reduced in its scope and that modifications should be made in its enforcement responsibilities.

It would be BIPAC's position that any such alterations should not seriously impede the work of the Commission. It was created with the goal of strengthening public confidence in our electoral processes; we believe it has been successful in that effort.

We applaud the PAC movement because we have seen that it is the vehicle by which thousands and thousands of citizens accept greater involvement in our political process. Political action committees are the means by which the political preferences of many thousands of Americans are expressed in terms of candidate support. Our democratic system functions best when the many and varied voices of our pluralistic society are heard.

It is with the hope of broadening the base of political participation and expanding the scope of dialogue on the issues that we urge the enhancement of the opportunities for full development of political action committees.

SUMMARY OF CORPORATE PAC SURVEY

1. In what year was your PAC started? 1976—9.4 per cent; 1977—8.2 per cent; 1978—19.4 per cent; 1979—20.0 per cent; 1980—23.0 per cent..

2. Total raised in the two-year period from January 1979 through December 1980 cumulatively by all 275 respondents? $10,595,600.00 from over 100,000 contributors.

3. What was the average donation to your PAC during this two-year pariod? $161.37.

4. How many donors to your PAC does the total sum of money raised represent? 388 donors.

5. How many employees are solicited by your PAC? 1,720.

6. What per cent of exempt employees (executive and administrative personnel) are solicited? 62.67 per cent.

7. What per cent of solicited employees actually contributed in the two-year period? 32.9 per cent.

8. Do you solicit shareholders? 17.7 per cent responded yes.

9. Do you allow trade association political action committees to solicit your employees? 11.5 per cent responded yes.

10. Do you use payroll deductions? 72.2 per cent responded yes.

11. Do you use a committee to made decisions about which candidate or party to support? 95.5 per cent responded yes; 2.1 per cent Washington office decides; 2.4 per cent chief executive officer decides.

12. Does your PAC make known to the corporate family who are the members of the PAC community who made decisions on candidate support? 78.5 per cent responded yes.

13. Do you allow earmarking of contributions? 25.1 per cent responded yes.

14. Does your PAC have a regular communication with PAC members in the form of a newsletter or annual report? 87.2 per cent responded yes.

15. In addition to the PAC does your company have a political education program? 22.0 per cent responded yes; economic education program? 12.4 per cent responded yes; citizenship involvement program? 21.5 per cent responded yes; get-out-the-vote campaign? 29.5 per cent responded yes; register to vote effort? 39.1 per cent responded yes; information on the issues? 49.2 per cent responded yes; other public affairs efforts? 24.1 per cent responded yes.

16. Did you have a separate state level PAC in 1979–1980? 22.4 per cent responded yes.

17. Did your PAC contribute to state or local candidates in 1979–1980? 44.2 per cent responded yes.

18. In states where it is legal, does your corporation make direct contributions from the corporation to state or local level candidates or parties? 30.4 per cent responded yes.

19. Did you make independent expenditures for federal candidates? 3.0 per cent responded yes.

20. Did you make in-kind contributions of goods or services in 1979–1980? 6.4 per cent responded yes.

21. Did you make internal communications for federal candidates, that is communicate to your stockholders or employees on behalf of a specific candidate or party? 3.7 per cent responded yes.

22. Did your PAC make a contribution toward the retirement of a candidate's debt in the 1979–1980 period? 57.4 per cent responded yes.

23. How much did your PAC contribute to federal candidates, parties, etc. . . . in the two-year period of 1979–1980? $31,818.

24. What was your average contribution to federal candidates for the United States Senate? $824.00.

25.What was you average contribution to federal candidates for the United States House of Representatives? $471.00.

26. What was your average contribution to candidates for United States President? $1,259.72 (only 83 PACs contributed).

27. What per cent of your PAC dollars to federal candidates went to Senate candidates? 36.7 per cent.

28. What per cent of your PAC dollars to federal candidates went to House of Representatives candidates? 60.0 per cent.

29. What per cent of your PAC dollars to federal candidates went to presidential candidates? 11.8 per cent (only 75 responded).

30. What per cent of your PAC dollars to federal candidates went to Republicans? 68.84 per cent.

31. What per cent of your PAC dollars to federal candidates went to Democrats? 29.4 per cent.

32. What per cent of your PAC dollars to federal candidates went to other party candidates? .2 per cent.

33. What per cent of your PAC dollars to federal candidates went to incumbents? 51.9 per cent.

34. What per cent of your PAC dollars to federal candidates went to challengers? 39.9 per cent.

35. What per cent of your PAC dollars to federal candidates went for open seats? 11.1 per cent.

Prepared Statement of the American Federation of Labor and Congress of Industrial Organizations

The American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) appreciates this opportunity to submit a statement on S. 1851 and the proposals therein for amending the Federal Election Campaign Act and on related matters concerning the regulation of federal election campaigns. We regret that because of the conflict with the AFL-CIO Convention we were unable to testify during the hearing on the bill.

Before turning to our discussion of S. 1851 we wish to note two points we believe to be of critical importance.

First, there is a move afoot by some members of Congress to abolish the Federal Election Commission. While the FEC is not without fault, we do not believe that the agency's faults are the cause of this effort or that the proposed alternative, transferring enforcement of the F.E.C.A. to the Department of Justice, will create a better system of campaign finance regulation.

The creation of the Federal Election Commission as an independent agency has for the first time in the history of American politics brought about a measure of enforcement for the campaign finance laws. The alternative to the present system—turning the law over to the Department of Justice—ignores the very reason why Congress created the Commission in the first place: an unbroken history of Justice Department non-enforcement of the predecessors to the FECA This history of non-enforcement is not mere happenstance. Instead it reflects the hard reality that a department charged with a myriad of law enforcement responsibilities and tied to the Executive Branch is in the nature of things unlikely to adequately and impartially enforce the campaign finance laws that regulate, inter alia, the chief Executive and the members of his party.

The proposal to replace the FEC with the Justice Department is a subtle suggestion that non-enforcement of the campaign finance act is the best alternative. If it is the will of Congress that the provisions of the FECA should no longer be enforced, then the law should be repealed. To leave the Act on the books but not enforce it simply breeds disrespect for Congress and the law.

Second, it must be emphasized that the legislative proposals which this Committee is now considering do not address what in our view is the most serious defect of the current campaign finance law, namely, its failure to stem the increasing importance of large contributions in the political process.

It is our position that at least as long as the well-to-do are permitted to make substantial political contributions, political action committees (PACs), which represent the special concerns of millions of Americans, have a legitimate balancing role in the financing of elections. But it is also our position that large contributions from a single source, whether it be a small number of wealthy individuals with common interests or a group of political committees which represent common interests, have a deleterious effect on the integrity of the political process.

Congress evidently shares this point of view since it has enacted not only limits on the amount that individuals and PACs may contribute to candidates but also restraints on the proliferation of political action committees. 2 U.S.C. § 441a.

Recent election's statistics, however, reveal that the number of PACs and the amount of PAC money in the campaign finance system has not been contained. Since 1974, the number of PACs registered with the FEC has grown from 604 to nearly 2,700. The number of business-related PACs alone has increased nearly tenfold since 1974.

As the number of PACs has grown, there has been a corresponding increase in the amount of PAC money interjected into federal election campaigns, particularly Congressional campaigns. Thus by 1980, FEC statistics show that PACs contributed nearly $55.3 million to Congressional candidates a figure which represents 22 percent of the total funds raised by such candidates across-the-board. That figure actually understates the point. Our review of 1980 post-election reports filed with FEC shows that a substantial number of Senate candidates received 35 percent or more of their total receipts from PACs. And while 1980 figures are not yet available, FEC statistics from the 1978 campaign reflect that over 25 percent of the Congressional candidates in that election received contributions totalling more than $50,000 from political action committees.

Preliminary FEC figures for the 1980 Congressional elections show that of the total $55.3 million non-part PACs contributed to Congressional candidates, over 35 million or 64 percent came from PACs sponsored by corporations of by trade associations, incorporated membership organizations and health organizations. These PACs are merely the alter ego of small groups of business executives and professional people who also make large contributions of their own. The result is that the already disproportionate influence which these wealthy individuals have on the political process is further augmented.

There are two options for ending the dominance of large contributions and preserving the salutary purposes of the FECA. Public financing of Presidential elections has been a success. As its Congressional sponsors hoped, the system has engendered a healthy mix of large and small contributions to Presidential candidates and has eliminated the dependence of Presidential candidates on those who can give the most. We believe that partial public financing of Congressional campaigns would have the same positive result.

We are fully aware that public financing of Congressional campaigns is a highly controversial concept, and that there is little chance of its prompt acceptance. At the very least then, a dollar limit on the total amount of PAC contributions a candidate for Congress may accept should be adopted. A bill containing such a limit has already been introduced in the House during this Congress and we hope to see a similar provision included among the FECA amendments recommended by this Committee.

With these preliminaries, we turn to the specific legislative proposals the Committee is now considering. We commend the Committee and particularly its Chairman, Senator Mathias, on the many constructive changes to the FECA proposed in S. 1851. We support in particular the following proposals: one, the proposal to allow bimonthly rather than monthly reporting by non-candidate committees (Sec. 6(1)); the proposal to amend 2 U.S.C. 437(g) to permit committees to correct minor errors which appear on the face of their FEC reports without such corrections triggering Commission enforcement proceedings (Sec. 12); and the proposal to substitute an election-year cycle for the per-election limit on contributions to candidates (Sec. 19(1)). These changes will reduce the reporting burden on political committees, avoid needless and expensive compliance actions, and simplify the present needlessly complex set of contribution limits.

In addition, we also support many of the clarifying amendments proposed in S. 1851, including the modification of the judicial review provisions of the Act, which will synchronize the provisions of Title 2 and Title 26, and the creation of authority for the Commission to waive the Act's registration and reporting requirements with respect to certain categories of persons.

There are on the other hand two sections of S. 1851 to which we are strongly opposed. First, we oppose the proposed increase of the Act's limits on individual contributions. As we have noted above, the problem with Congressional campaign financing at present is not that there is too little in the way of large contributions, it is that there is too much.

The number of wealthy individuals who can afford to contribute a thousand dollars or more to a federal candidate or to make $25,000 in total contributions in a year is very small. Increasing individual limits to $4,000 per election cycle and $40,000 per year would only benefit a miniuscule number of the rich; it would de nothing to increase the number of individuals who make small contributions. This Congress' work in areas such as the tax bill shows that the rich already have more than a sufficient say. There is simply no argument for further increasing their political power.

We also oppose the proposed amendment to 2 U.S.C. 434(c) (§ 8 of S. 1851). This provision would require Sec. 441b organizations including unions to report to the FEC their treasury money expenditures for administering and soliciting contributions to their PACs; for the limited nonpartisan voter registration and get-out-the-vote activities permitted by the law and for the direct costs of internal communications that expressly advocate the elections or defeat of a clearly identified candidate. We believe that this proposal is defective in three basic regards:

First, union staff, facilities, and communications are seldom, if ever, devoted exclusively to the internal political activities covered by the amendment. Instead, these activities are integrated into the day-to-day operations of labor unions and their costs are therefore exceedingly difficult to segregate.

For example, consider the difficulty of establishing the costs of operating a union's separate segregated fund. Should these costs include a share of the union's mortgage payment or rent based on the amount of space occupied by the committee? Would utility bills have to be allocated in order to break out the PAC's share?

These instances simply illustrate what Congress recognized in 1976 during its consideration of a similar amendment sponsored by Senator Packwood; viz., that reporting requirements of the type proposed by this amendment would create difficult allocation and recordkeeping problems for most organizations. (See e.g., 122 Cong. Rec. H-2656 (Daily Edition, April 1, 1976) remarks of Rep. Thompson.)

Second, Congress also recognized in 1976 that compelled disclosure of every expenditure for internal political activities would inhibit all but the largest corporations and labor unions from engaging in any sort of internal political activity. Only those organizations have the financial wherewithal to pay for the sophisticated accounting systems—and the personnel to operate those systems—necessary to isolate their internal expenditures for federal political activity from their other expenses. There are 50,000 local unions affiliated with AFL-CIO national and international unions. Roughly half have no full-time officers; a majority do not have a paid bookkeeper or office secretary. These locals simply do not have the resources to finance the recordkeeping and reporting which the amendment would require. They would have virtually no choice but to end their involvement in registration and get-out-the-vote activity and in communicating with their members on political subjects. Such a result, we submit, would clearly be contrary to the purposes of the FECA.

Third, the enormous burden which these reporting requirements would place on union organizations and other organizations subject to 2 U.S.C. § 441b cannot be justified by the limited benefit to be gained from the public disclosure of the expenditures in question. Reporting of the internal communications that most resemble the political activity regulated by the Act as a whole—communications primarily devoted to advocating the election or defeat of federal candidates—is already required. The remaining activities that would be picked up by the proposed amendment either involve small sums of money (e.g., the costs of administering separate segregated funds) or are at the margins of the Act's concerns (e.g., registration drives and editorials in general publications, both of which are exempted from the Act when engaged in by other entities, see 2 U.S.C. §§ 431(9)(B) (i), (ii)). We therefore fail to see how any of the expenditures which would be disclosed under this amendment represent even the most attenuated danger to the integrity of the electoral process. To the contrary, union expenditures of this nature enhance the democratic process by stimulating membership participation in federal elections.

Moreover, the possible gain in added information must also be balanced against the burden placed on the Federal Election Commission. If the proposed amendment becomes law, the Commission will receive thousands of pages of additional expenditure reports. The Commission is already, as Congress is well aware, experiencing difficulties in keeping up with the reports on financial activity which are far more germane to the Act's purposes and which must already be filed under the Act as it stands. The net result is likely to be a decrease in public understanding of who is spending what on federal elections.

The sum of the matter is that the benefits to be realized from the proposed disclosure are limited, and the burdens which such reporting would place on the day-to-day activities of § 441b organizations are enormously greater than those benefits.

Senator FORD. I have one item that I would like to place in the record. I have talked with a good many people about last Friday's hearings, and some are concerned about the various charges made in testimony about the Federal Election Commission's litigation of cases. I would suggest that the FEC be given an opportunity to set the record straight in relation to them, and to give a complete statement about the nitpicking allegations.

I request that the Federal Election Commission give the committee a statement for the record, setting forth its justification for each of the cases cited by Attorney Kamenar, and another statement amplifying Chairman McGarvy's comment about the nitpicking accusations.

[The following material was received for the record:]

Federal Election Commission,
Washington, D.C., February 1, 1982.

Hon. **Charles McC. Mathias, Jr.,**
Chairman, Committee on Rules and Administration, U.S. Senate, Washington, D.C.

Dear Senator Mathias: On November 24, 1981, at the conclusion of the Committee's hearings concerning the Federal Election Campaign Act Senator Ford asked that the record remain open so that the Federal Election Commission could address a problem experienced by Senator Ford's campaign committee, as well as certain allegations which were raised at the hearings. We are pleased to respond to that request.

The Commission opened its doors only seven years ago. There have been some very significant accomplishments since 1975, the most important of which is the full disclosure of campaign finance information. The extent of disclosure of campaign finance attributable to the Commission's enforcement efforts.

The Federal Election Campaign Act is very specific in its requirements and mandates steps that must be followed in dealing with potential enforcement matters. While legislative changes have lightened some previously burdensome reporting provisions, the statute is still so specific that its application often results in very precise, technical procedures and raises difficult implementation questions not previously addressed.

In circumstances where a complaint has been received alleging a violation of the Act, the Commission looks carefully at all allegations. What may seem to be nitpicking to a candidate or committee under Commission investigation might be viewed as a substantial issue by those bringing the matter to the Commission's attention. The Commission's statutory responsibility is to make a factual determination regarding possible legal violations. In cases where a complaint is dismissed, the Commission must be prepared to respond to a court challenge of its decision.

The Commission places primary emphasis on obtaining voluntary compliance with the requirements of the law. Reports are never "rejected." When an incomplete report is received or entries on a report raise questions, the filer is notified that additional information is required. While much of the information which the Act requires of filers may seem minor, the Commission believes that the details mandated by law cannot be ignored. The value of the statute lies largely in the uniform application of its requirements.

The Commission does not pursue every inadequacy or omission in a report. The Reports Analysis Review and Referral Policy establishes threshold standards for substantial compliance with the law which eliminate the need for further action on insignificant matters. Many reporting problems which might have been pursued in the past by the Commission, no longer become enforcement actions.

A number of the "minor" matters that the Commission deals with come before us as advisory opinion requests. Individuals and organizations have a statutory right to obtain an advisory opinion regarding application of the law and regulations to specific circumstances. The Commission must respond to all such requests (2 U.S.C., 437f(a)(1)).

Another criticism of the Commission relates to its litigation activities. In many instances, the Commission has had no alternative other than litigation. As shown by figures previously submitted to the Committee, the Commission has been highly successful in its litigation, winning some 90 percent of its cases. This success ratio indicates that the courts generally have believed Commission actions and interpretations to be warranted under the law.

Litigation has served to answer many important questions regarding the Act. Indeed, many of the criticisms directed against the Commission appear to represent only disagreement with individual Commission judgments, not an overall assessment of the importance of issues addressed.

The Federal Election Campaign Act includes a number of provisions which protect individuals and organizations against improperly motivated actions. In seeking to assure the integrity of the federal electoral process, Congress has included in the important provision that any person who believes that a violation of the Act has occurred may file a complaint with the Commission. Respondents are given every opportunity to rebut and disprove the allegations.

Additional protections are provided by the nature of the Commission itself. There are six full-time Commissioners who are appointed by the President, with the advice and consent of the Senate, for six-year terms. No more than three of the Commissioners may be from the same political party. Furthermore, no policy decision or enforcement action against any individual or group can be commenced except by a vote of at least four Commissioners.

In reversing many years of non-enforcement of campaign finance law, many controversial judgments have been made by the Commission. However, charges that all Commission actions are "nitpicking" are totally erroneous. The Commission has established an overall record of fairly and effectively interpreting and enforcing the law.

An examination of the specific charges of Commission "nitpicking" raised at the Committee's hearings will hopefully serve to put an end to some of the lingering misconceptions about Commission action.

REPORT REJECTION FOR OMISSION OF A STATE NAME

The Commission agrees with Senator Ford that rejection of an entire report for merely omitting the State name "Illinois" from a donor address in Chicago would be inappropriate. We have reviewed all of our records and can find no indication of action such as Senator Ford described. The Commission has never returned or rejected a report. Furthermore, under the thresholds mentioned above, such a trivial omission would not be the cause for further action. It appears that this incident took place in Senator Ford's 1974 election campaign, before the Commission was established, or may otherwise represent action by an entity other than the Commission.

READER'S DIGEST/PHILLIPS PUBLISHING, INC.

Formal complaints were filed with the Commission in connection with the 1980 presidential election campaign regarding certain activities of the Reader's Digest Association, Inc., and Phillips Publishing, Inc. These separate complaints alleged violations of the Federal Election Campaign Act in regard to the advertisement of an article to be published in Reader's Digest and a subscription solicitation for the "Pink Sheet on the Left," published by Phillips Publishing Co.

News stories, commentaries, or editorials distributed through the facilities of broadcasting stations, newspapers, magazines or other periodical publications are generally exempt from the Act. When these complaints were received, the Commission determined that threshold investigations were warranted to ascertain whether the activities described in the complaint fell within the "press" exemption. In each instance, the respondent initiated court action seeking to stop the Commission investigation.

The United States District Court for the Southern District of New York refused to enjoin the Commission's investigation of the Reader's Digest Association. After completing an investigation, the Commission found no probable cause to believe that a violation had been committed by Reader's Digest Association and voted to close the file.

The United States District Court for the District of Columbia determined that the allegations in the complaint against Phillips Publishing did not set forth a violation of the Act and, therefore, the Commission did not need to conduct an investigation. While the Commission did not agree with the finding in this case, a decision was made not to appeal in the interest of economy.

Each of these cases involved sensitive and complex First Amendment questions. The Commission has never sought to block the publication of any news article. Rather, Commission activity has been limited to investigation of possible violations of the law.

JOHN ADAMS

In 1976, the Commission established an objective procedure to determine when to initiate action against candidates for failure to file reports. The non-filer program was based on the Commission's judgment that it had responsibility to assure those complying with the law that others would not be allowed to ignore it.

John Adams came to the attention of the Commission because he successfully obtained the nomination of a major party for election to the House of Representatives from New Hampshire in 1976, receiving 12,195 votes. He received numerous communications from the Commission and wrote back on several occasions that he felt no obligation to report or designate a principal campaign committee. Suits were brought in 1976 against Mr. Adams and 13 other non-filers. A Federal District Court default judgment was entered against Mr. Adams in the Commission's behalf in January 1977, ordering him to file the required reports and imposing a fine. It was only after entry of the judgment that the Commission found out that Mr. Adams was disabled. Shortly thereafter, the Commission determined to take no further action to enforce the judgment, and so notified the court. Had the Commission determined Mr. Adams' condition earlier, it undoubtedly would not have proceeded against him.

EUGENE M'CARTHY

This was a reporting case arising out of the 1976 election in which the Commission sought to have funds which were honoraria receipts reported as contributions from the candidate to the Committee for a constitutional Presidency. In 1979, a Federal District Court acknowledged that there may have been a technical violation of the Act, but took the view that the newness of the statute and the lack of detailed requirements militated against enforcement.

REAGAN 1976 COMMITTEE

The Reagan '76 Committee failed to report the occupations of 35 percent of its contributors despite the requirement of the Act (now included at 2 U.S.C. 432(c)(3) and 434(b)(3)) that such information be provided. The Commission sought to enforce these reporting requirements uniformly against committees with large percentages of omissions. In an enforcement action, a federal court declined to enforce the Act because there were no clear criteria to define "best efforts" by the Committee in seeking the information. The Commission now has in place a regulation which defines the term "best efforts" (11 C.F.R. 102.9(d) and 104.7).

CENTRAL LONG ISLAND TAX REFORM IMMEDIATELY (CLITRIM)

The CLITRIM case was one of seven enforcement actions involving alleged violations of the Federal Election Campaign Act by TRIM committees set up by the John Birch Society. In the fall of 1976, local TRIM committees printed and distributed nationwide, 460,000 critiques concerning the voting records of certain Members of Congress. Complaints were received regarding the distribution of these critiques. The Commission viewed the critiques as expressly advocating the candidates' defeat. The TRIM committees were not registered with the FEC, the production costs were not reported, and the materials included no notice of nonauthorization as required by law.

In 1977, the FECA was still relatively new and there were many unsettled questions concerning its application. One of these unsettled questions concerned the meaning of the term "express advocacy," which was not defined in the statute. The sensitive nature of the CLITRIM case was carefully considered before the Commission proceeded. The General Counsel prepared a lengthy memorandum fully covering the factual, statutory and constitutional considerations in the matter. The case was a test case, rather than an isolated instance involving minimal expenditures.

NATIONAL RIGHT TO WORK COMMITTEE

On December 21, 1977, the Commission filed suit in the United States District Court for the District of Columbia against the National Right to Work Committee (NRWC) and its separate segregated fund, the Employee Rights Campaign Committee (ERCC). In seeking declaratory and injunctive relief, it was alleged that the NRWC and ERCC had violated the Federal Election Campaign Act of 1971, as amended, by soliciting political contributions from 267,123 members of the general public. The Commission had earlier received a formal complaint that the NRWC and ERCC had violated 2 U.S.C. 441b(b)(4)(C) by soliciting contributions from persons other than stockholders or administrative personnel and their families. Court action was authorized by the Commission on October 5, 1977, after attempts at conciliation failed and the Commission found probable cause to believe that a violation had occurred.

After being notified of the Commission's intent to file suit, the NRWC filed a complaint in the United States District Court for the Eastern District of Virginia asserting that the provision of the Act which was allegedly violated was unconstitutionally vague, that definitions adopted by the FEC violated equal protection, and that the FEC had violated due process in the handling of an advisory opinion request. The cases were consolidated and, on April 24, 1980, the District of Columbia District Court ruled in favor of the Commission. On September 4, 1981, however, a three-judge appeals court panel reversed the initial decision. When the Commission sought a rehearing en banc, five of the appeals court's ten judges voted in favor of the Commission's suggestion, one less than the majority required to grant a rehearing.

The Commission is seeking Supreme Court review of the decision because the case presents a particularly important question of federal law. It is the Commission's position that the appeals court decision seriously misconstrued an important provision of the Act and could seriously undermine its effectiveness.

The Commission's action in no way represents harassment of the NRWC. The Commission has consistently taken the position that the broad solicitation conducted by the NRWC is not permissible, and that position was upheld by the district court. Although the three-judge appeals court panel did not accept this interpretation, half of the active judges of the court of appeals considered the question to be sufficiently important, and the Commission's position to be compelling enough, to warrant rehearing en banc, which is rarely granted. In these circumstances, the Commission believed that a final authoritative resolution of the scope of the law should be sought from the Supreme Court.

ARCHIE BROWN

On November 20, 1981, the U.S Court of Appeals for the District of Columbia Circuit affirmed an earlier district court decision upholding the Commission's dismissal of a complaint filed by Mr. Brown. He had alleged that the International Brotherhood of Teamsters, Chauffeurs, and Warehousemen and Helpers of America (The Teamsters) had attempted to coerce him to contribute to the labor union's separate segregated fund. The court found that the General Counsel's report to the Commission, which concluded that he was denied membership in a union local because of failure to pay dues rather then because of his refusal to contribute to the union PAC, was sufficient grounds for dismissal of the complaint. The appeals court took note of "the large discretion the Commission has to determine whether or not a civil violation of the Act has occurred."

At the Senate Rules Committee's November hearing, counsel for Mr. Brown indicated that the Commission "lost" files in this matter. This is not correct. A Freedom of Information Act request was made for personal working files of Commission staff members which were not within the possession of the Commission. The staff members were free to dispose of their files or retain them. At no time did the Commission lose possession of its official permanent file.

NATIONAL EDUCATION ASSOCIATION (NEA) AND AFL-CIO

The National Right to Work Committee filed suit in 1977 alleging that the FEC had failed to act on its complaints against the AFL-CIO and NEA within 90 days, as required by law. The fact is that in both cases the Commission was engaged in active enforcement proceedings against each respondent when the suits were filed.

In both of these suits filed by the NRWC, the court ordered the Commission to take final action on the NRWC's complaint within 30 days. However, in each instance, the Commission had, prior to the court order, found "reasonable cause to believe" that the respondents had violated the Act and was involved in the mandatory conciliation period. Shortly after issuance of the court order, the Commission filed a civil action against the respondents.

Because of the complexity of the issues and the large amounts of money involved, it was essential that the Commission conduct a thorough investigation prior to finding reasonable cause to believe that a violation had occurred. In the AFL-CIO case, this required a full audit of transactions between the AFL-CIO's Committee on Political Education and the Federation's Political Contributions Committee. In the NEA case, the investigation involved the operation of procedures for collecting political contributions in eighteen states.

The thoroughness of the Commission's investigatory effort in each case was reflected by the Commission's success at the district court level. The court agreed with the Commission in each case that the AFL-CIO and the NEA had violated the Act. In the AFL-CIO case, the court enjoined the Federation from further violations and imposed a $10,000 civil penalty. (The civil penalty was vacated by the Court of Appeals on April 1, 1980. The district court's injunction and finding of a violation were not appealed.) In the NEA case, the court enjoined the NEA and its PAC form further use of the reverse check-off procedure to obtain political contributions and required them to establish a mechanism under court supervision whereby NEA members could obtain refunds of contributions illegally obtained.

One final point the Commission would like to make regarding some allegations of "nitpicking" is the importance of the identity of persons making the charges. Collateral attack of Commission actions is occasionally the reaction of respondents in enforcement matters. Such charges serve to divert attention from the violation in question and place the Commission in a defensive posture. Some of the strongest critics of the Commission are individuals who have been respondents or who are or have served as counsel in Commission proceedings for some of the "victims" of the alleged nitpicking.

The opportunity presented by the Committee to address these matters is appreciated. The Commission trusts that the information presented will be useful to your deliberations.

Sincerely,

FRANK P. REICHE,
Chairman for the Federal Election Commission.

Senator **FORD** (presiding). And with that little statement this meeting is adjourned.

[The committee adjourned at 12:48 p.m.].

APPENDIX

APPENDIX I

97TH CONGRESS
1ST SESSION

S. 1550

To amend the Federal Election Campaign Act to prohibit the use of compulsory union dues for political purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30 (legislative day, JULY 8), 1981

Mr. HELMS (for himself, Mr. EAST, Mr. GOLDWATER, Mr. GRASSLEY, Mr. HAYAKAWA, Mr. HUMPHREY, Mr. LAXALT, Mr. SYMMS, and Mr. THURMOND) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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A BILL

To amend the Federal Election Campaign Act to prohibit the use of compulsory union dues for political purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 316(b)(2)(C) of the Federal Election Campaign Act is amended by inserting before the period "; provided all contributions, gifts, or payments for such activities are made freely and voluntarily, and are unrelated to dues, fees, or other moneys required as a condition of employment".

SEC. 2. Section 316(b)(3) of the Federal Election Campaign Act is amended by—

(1) striking "and" at the end of subparagraph (B);

(2) striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) adding after subparagraph (C) the following:

"(D) to use any fees, dues, or assessments paid to any organization as a condition of employment, or money or anything of value secured by physical force, job discrimination, or financial reprisal for (i) registration or get-out-the-vote campaigns, (ii) campaign materials or partisan political activities used in connection with any broadcasting, direct mail, newspaper, magazine, billboard, telephone banks, or any similar type of political communication or advertising, (iii) establishing, administering, or soliciting contributions to a separate segregated fund, or (iv) any other expenditure in connection with any election to any political office or in connection with any primary election or political convention or caucus held to select candidates for any political office.".

II

97TH CONGRESS
1ST SESSION

S. 1766

To amend the Federal Election Campaign Act of 1971 to provide that the limitations on contributions to candidates shall be waived for elections in which any candidate spends more than $35,000 from his personal funds.

IN THE SENATE OF THE UNITED STATES

OCTOBER 22 (legislative day, OCTOBER 14), 1981

Mr. CRANSTON introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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A BILL

To amend the Federal Election Campaign Act of 1971 to provide that the limitations on contributions to candidates shall be waived for elections in which any candidate spends more than $35,000 from his personal funds.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 315(a) of the Federal Election Campaign Act of 1971 (2 U.S.C. 441a(a)) is amended by adding at the end thereof the following new paragraphs:

"(9)(A) The limitations provided in paragraphs (1)(A) and (2)(A) of this subsection shall not apply with respect to contributions made with respect to any election in which any candidate makes expenditures from his personal funds or the personal funds of his immediate family which aggregate more than $35,000.

"(B) In determining whether an individual has exceeded the limitation provided in paragraph (3) of this subsection, any amount contributed to a candidate (or his authorized political committees) in an election, with respect to which the provisions of subparagraph (A) of this paragraph are applicable shall not be counted.

"(C) In determining whether a candidate has made expenditures in excess of $35,000 under subparagraph (A), an expenditure shall be deemed to have been made by a candidate if it is made by the candidate, an authorized committee of the candidate, an agent of the candidate for the purpose of making the expenditure, or any other person authorized by the candidate, his authorized political committee, or his agent to make such expenditure.

"(D) For purposes of this paragraph the term 'immediate family' means a candidate's spouse, children, parent, grandparent, brother, half-brother, sister, or half-sister, and the spouse of any such person.

"(10)(A) Not later than the date on which a candidate qualifies for election to Federal office under the law of the appropriate State, or 90 days before the date of any such election, whichever is earlier, each candidate for election to Federal office shall file with the Commission a declaration of whether he intends to make expenditures from his personal funds or the personal funds of his immediate family which aggregate more than $35,000.

"(B)(i) Not later than 60 days before the date of such election, each candidate who has reason to believe that he may make expenditures from his personal funds or from the personal funds of his immediate family aggregating more than $35,000 shall notify the Commission to that effect, unless such candidate filed with the Commission a timely declaration that he intended to exceed such amount as provided in subparagraph (A).

"(C) Each candidate for election to Federal office shall notify the Commission and each other candidate for the same election within 48 hours after he, or any of his authorized committees make any expenditure, or incur any obligation to make an expenditure, from his personal funds or the personal funds of his immediate family which aggregate more than $35,000.

"(D) The Commission is authorized to determine, upon its own initiative or upon the request of any candidate for election to Federal office, whether any candidate has made expenditures or incurred obligations to make expenditures from his personal funds or the personal funds of his immediate family which aggregate more than $35,000.

"(E) If a candidate fails to file a timely declaration pursuant to this paragraph, any opposing candidate in such election shall automatically be granted a waiver of such expenditure limitations.".

SEC. 2. Section 309(d)(1) of such Act (2 U.S.C. 437g) is amended by adding at the end thereof the following:

"(D) Any knowing and willful violations of section 315(a)(10) shall be punishable by a fine of not more than $10,000 or imprisonment for not more than 5 years or both.".

SEC. 3. The amendments made by this Act shall be effective with respect to elections for Federal office held more than 90 days after the date of the enactment of this Act.

II

97TH CONGRESS
1ST SESSION

S. 1851

To amend the Federal Election Campaign Act of 1971.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16 (legislative day, NOVEMBER 2), 1981

Mr. MATHIAS introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

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A BILL

To amend the Federal Election Campaign Act of 1971.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Election Campaign Amendments Act of 1982".

SEC. 2. Section 301 of the Federal Election Campaign Act of 1971 is amended—

(1) in paragraph (2) by striking out "$5,000" each place it appears and inserting in lieu thereof "$10,000"; and

(2) by amending paragraph (9)(B)(iii) to read as follows:

"(iii) any communication by any membership organization or corporation to its members, stockholders, or executive or administrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office;".

SEC. 3. Section 302(e) of the Federal Election Campaign Act of 1971 is amended—

(1) by striking out paragraph (5) and inserting in lieu thereof the following:

"(5) The name of any political committee having a connected organization, including any separate segregated fund established pursuant to section 316(b), shall include the name of its connected organization."; and

(2) by adding at the end thereof the following new paragraphs:

"(6) The name of any political committee established to draft or to encourage an individual to become a candidate shall include 'draft' or a similar descriptive term, and the name of the individual.

"(7) The name of any political committee established to support the selection of delegates or the delegates to a national nominating convention shall, if qualified under the provisions of this Act as a political committee, include the word 'delegate' and the name, if any, of the Presidential candidate or candidates it supports.

"(8) The national committee of a political party and affiliated, subordinate or auxiliary committees of a national committee of a political party, the State committee of a political party and affiliated, subordinate or auxiliary committees shall use the name of the political party in the name under which it registers.

"(9) Each designation, statement, and report required to be filed shall include the full name of the political committee.".

SEC. 4. Section 303(b) of the Federal Election Campaign Act of 1971 is amended—

(1) by striking out "and" at the end of paragraph (5);

(2) by striking out the period in paragraph (6) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(7) the name and address of any political consultant or management firm or direct mail, or polling firm engaged by the reporting political committee when a committee principal or principals operate or have an interest in such firm.".

SEC. 5. Section 304(a)(3)(A) of the Federal Election Campaign Act of 1971 is amended—

(1) by striking out "and" at the end of clause (ii); and

(2) by adding the following new clause at the end thereof:

"(iv) on receipt of a written notice that a Presidential candidate is no longer seeking nomination or election to that office, the Commission may waive the requirements for pre- and post-general election reports and may permit principal campaign committees of such Presidential candidates currently filing on a monthly basis to revert to quarterly filing.".

SEC. 6. Section 304(a) of the Federal Election Campaign Act of 1971 is amended—

(1) in paragraph (4)—

(A) by amending subparagraph (B) to read as follows:

"(B) bimonthly reports in all calendar years which shall be filed no later than the twentieth day after the last day of the two-month period and shall be complete as of the last day of the two-month period, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pregeneral election report shall be filed in accordance with paragraph (2)(A)(i), a postgeneral election report shall be filed in accordance with paragraph (2)(A)(ii), and a yearend report shall be filed no later than January 31 of the following calendar year."; and

(B) by striking out subparagraph (A)(ii) and inserting in lieu thereof the following:

"(ii) a preelection report or notice to the Federal Election Commission that such report is not required, no later than the twelfth day before (or posted by registered or certified mail no later than the fifteenth day before) any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election (which the reporting committee has not previously reported) and such report shall be complete as of the twentieth day before the election."; and

(2) by striking out paragraph (6) and inserting in lieu thereof the following:

"(6)(A) In addition to all other reporting requirements under this Act, eight days before an election the principal campaign committee of the candidate shall, in one submission, report to the Clerk, the Secretary, or the Commission, as appropriate, contributions of $1,000 or more, received after the close of books on the twentieth day before the election through the tenth day before the election.

"(B) Written notifications of contributions of $1,000 or more received after the tenth day before the election and more than forty-eight hours before the election shall be made within forty-eight hours after receipt.

"(C) The notification required under this paragraph shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, the date of receipt and the amount of the contribution.".

SEC. 7. Section 304(b) of the Federal Election Campaign Act of 1971 is amended—

(1) in paragraph (3)(A) by striking out "$200" and inserting in lieu thereof "$500";

(2) in paragraph (3)(F) by striking out "$200" and inserting in lieu thereof "$500";

(3) in paragraph (3)(G) by striking out "$200" and inserting in lieu thereof "$500";

(4) in paragraph (5)(A) by striking out "$200" and inserting in lieu thereof "$500";

(5) in paragraph (6)(A) by striking out "$200" and inserting in lieu thereof "$500"; and

(6) in paragraph (6)(B) by striking out "$200" each place it appears and inserting in lieu thereof "$500".

SEC. 8. Section 304(c) of the Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following:

"(4) Notwithstanding the provisions of section 315(b)(2) (A), (B), and (C), a corporation, a labor organization, or a national bank establishing a separate segregated fund shall disclose either through reports of their separate segregated funds or directly to the Federal Election Commission, the costs incurred with respect to each of the following:

"(A) the establishment, administration, and solicitation of contributions of its separate segregated fund, which shall be reported in accordance with section 304(a)(4)(A) (i) and (iv);

"(B) nonpartisan registration and get out the vote campaigns by a corporation directed at its shareholders and executive or administrative personnel and their families, and by a labor organization aimed at its member and their families, which shall be reported in accordance with section 304(a)(4)(A) (i) and (iv); and

"(C) those costs which are directly attributable to communications of a corporation to its members, stockholders, and administrative and executive personnel and communications of a membership organization, including a labor organization, to its members, expressly advocating the election or defeat of a clearly identified candidate or candidates, which shall be reported in accordance with section 304(a)(4)(A)(i) and with respect to any general election shall be reported in accordance with section 304(a)(4)(A)(ii).".

SEC. 9. Section 304(c) of the Federal Election Campaign Act of 1971 is amended—

(1) in paragraph (1) by striking out "$250" and inserting in lieu thereof "$500"; and

(2) in paragraph (2)(C) by striking out "$200" and inserting in lieu thereof "$500".

SEC. 10. The Federal Election Campaign Act of 1971 is amended by adding after section 304 the following:

"WAIVER OF REPORTING REQUIREMENT

"SEC. 304A. In accordance with the provisions of section 311(d) of this Act the Commission may exercise authority to waive in part or in whole those reporting, recordkeeping, organizational, or other requirements of the Act which may be excessive or unnecessary with respect to the particular categories of persons to which the waiver will apply.".

SEC. 11. Section 308(d) of the Federal Election Campaign Act of 1971 is amended by inserting after "for an advisory opinion" the following: "except the period for public comment shall be five days when the request is one which is required by this Act to be answered within twenty days".

SEC. 12. Section 309(a)(1) of the Federal Election Campaign Act of 1971 is amended by inserting after "complaint." the following: "When a correction of a violation disclosed on the face of a report is made by the reporting entity either prior to the next reporting date or within fifteen days after receipt by the committee of notification based on a complaint filed with the Commission or based on the Commission's review, the Commission shall take no further action on the corrected violation and shall dismiss a complaint or that part of a complaint in regard to such corrected violation.".

SEC. 13. The Federal Election Campaign Act of 1971 is amended by striking out the text of section 310 and inserting in lieu thereof the following:

"(a)(1) The Federal Election Commission, the national committee of a political party, or any individual eligible to vote in any election for the office of President is authorized to institute such actions as may be appropriate to implement or construe any provisions of the Federal Election Campaign Act, or chapter 95 or chapter 96 of the Internal Revenue Code of 1954, known as the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act, including actions for declaratory judgment or injunctive relief in the appropriate district court of the United States, without regard to the amount in controversy. Actions authorized as separate actions under this section otherwise authorized for the respondent shall not be based on facts and legal issues arising under enforcement proceedings for which notice has been given pursuant to section 437g of this Act.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection when an action is filed challenging the constitutionality of the Federal Election Campaign Act, or of chapter 95 or chapter 96 of this Act. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case, to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

"(b) Any certification, determination, or other action by the Commission made or taken pursuant to the provisions of chapter 95 or chapter 96 of this Act, shall be subject to review by the United States Court of Appeals for the District of Columbia upon petition filed in such court by any interested person. Any petition filed pursuant to this section shall be filed within thirty days after the certification, determination, or other action by the Commission for which review is sought.

"(c) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and expedite to the greatest extent possible the disposition of any questions regarding the constitutionality of this Act.".

SEC. 14. The Federal Election Campaign Act of 1971 is amended by adding after section 310 the following new section:

"PARTICIPATION BY COMMISSION IN JUDICIAL PROCEEDINGS

"SEC. 310A. (a) The Commission is authorized to appear in and defend against any action filed under section 310 of this Act either by attorneys employed in its office or by counsel whom it may appoint without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title.

"(b) The Commission is authorized through attorneys and counsel described in subsection (a) to appear in the district courts of the United States to seek recovery of any amounts determined to be payable to the Secretary of the Treasury as a result of examination and audit made pursuant to section 9007 and section 9008 of the Internal Revenue Code of 1954.

"(c) The Commission is authorized through attorneys and counsel described in subsection (a) to petition the courts of the United States for declaratory or injunctive relief concerning any civil matter covered by the provisions of chapter 95 or 96 of the Internal Revenue Code of 1954 or of section 6096 of such Code. Upon application of the Commission an action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

"(d) The Commission is authorized on behalf of the United States to appeal from, and to petition the Supreme Court for certiorari to review, judgments or decrees entered with respect to actions in which it appears pursuant to the authority provided in this section.".

SEC. 15. Section 311(b) of the Federal Election Campaign Act of 1971 is amended by—

(1) inserting "(1)" after the subsection designation "(b)"; and

(2) adding at the end thereof the following:

"(2) Any review of reports made by the Commission in the course of carrying out its supervisory responsibilities shall be carried out expeditiously. Any notices of errors, deficiencies, or violations apparent on the face of a report shall be sent as soon as possible but not later than the next reporting date unless the error, deficiency, or violation is either a continuing one which carries over to a subsequent report or becomes apparent only after receipt of a subsequent report. Neither the twelve-day preelection report nor the thirty-day post general election report shall be considered the next reporting date for the purposes of this paragraph. The timing of notices required by this paragraph shall not apply to the political committees reporting under the provisions of section 304(a)(3) of this Act.".

SEC. 16. Section 311 of the Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following:

"(g)(1) The Federal Election Commission shall transmit to the Congress proposed rules and regulations necessary for the purpose of implementing the provisions of this Act, and the amendments made by this Act prior to two months after the date of enactment of this Act.

"(2) The provisions of subsection (d) of this section allowing disapproval of rules and regulations by either House of Congress within thirty legislative days after receipt shall, with respect to rules and regulations required to be proposed under paragraph (1) of subsection (a), be deemed to allow such disapproval within fifteen legislative days after receipt.

"(h) The Commission may establish a revolving fund account for the purpose of making expenditures to pay for the cost of printing of publications, the purchase of photocopy materials and other types of reproduction supplies in an amount that may be recovered by the sale of documents and publications for which there are requests. In establishing a fee schedule, the Commission shall take into account that the public interest is served in making available requested documents and publications about the Act. No less than the actual cost of printing, materials, or supplies shall be recovered.".

SEC. 17. Section 313 of the Federal Election Campaign Act of 1971 is amended by striking out ", with respect to any individual who is not a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress on January 8, 1980,".

SEC. 18. Section 315(a)(1) of the Federal Election Campaign Act of 1971 is amended—

(1) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) to any candidate and his authorized political committees for an election or elections for a Federal office in a particular year which, in the aggregate, exceed '$4,000';"; and

(2) in subparagraph (C) by inserting before the period the following: ", or $2,000 for a political committee established to draft or to encourage an individual to become a candidate".

SEC. 19. Section 315(a)(2) of the Federal Election Campaign Act of 1971 is amended—

(1) by striking out subparagraph (A) and inserting in lieu thereof the following:

"(A) to any candidate and his authorized political committees for an election or elections for Federal office in a particular year which, in the aggregate, exceed '$10,000';";

(2) in subparagraph (B) by striking out "$15,000" and inserting in lieu thereof "$20,000"; and

(3) in subparagraph (C) by inserting before the period, the following: ", or $2,000 when the political committee is receiving funds or making expenditures to draft an individual or to encourage an individual to become a candidate".

SEC. 20. Section 315(a)(3) of the Federal Election Campaign Act of 1971 is amended by striking out "$25,000" and inserting in lieu thereof "$40,000".

SEC. 21. Section 315(a)(4) of the Federal Election Campaign Act of 1971 is amended by striking out "contributions to" and inserting in lieu thereof "contributions of $250 to each of".

SEC. 22. Section 315(a) of the Federal Election Campaign Act of 1971 is amended by striking out paragraph (6) and inserting in lieu thereof the following:

"(6) For purposes of the limitations on a candidate imposed by paragraphs (1) and (2) of this subsection, all elections held in any calendar year shall be considered to be one election. Contributions made by any person to a draft committee shall, if the individual becomes a candidate, be counted against applicable candidate contribution limitations.".

SEC. 23. Section 315(a)(8) of the Federal Election Campaign Act of 1971 is amended by inserting after "candidate" each place it appears "or political committee".

SEC. 24. Section 315 of the Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following:

"(i) Except as it applies to publicly funded Presidential candidates, section 315(a)(1)(A) shall be suspended with respect to contributions by one individual family member of a candidate to the candidate and his authorized political committees when notification is provided to the Federal Election Commission by the candidate and the individual family member jointly. The individual family member may be any one of the following: spouse, parent, grandparent, sister, brother, daughter, or son. Contributions made by such family member under the provisions of this paragraph shall not constitute contributions for the purpose of the $40,000 annual limit set forth in section 315(a)(3).".

SEC. 25. Section 318(a) of the Federal Election Campaign Act of 1971 is amended by—

(1) striking out the period at the end of paragraph (3) and inserting in lieu thereof a semicolon; and

(2) by adding at the end thereof the following:

"(4) if paid for and authorized by a political committee which uses a variation of the name but is not a political party committee described in section 302(e)(8)(A), shall clearly state that the communication is not authorized by any affiliated, subordinate, or auxiliary committee of the named political party.".

SEC. 26. Section 323 of the Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following:

"(e) The Office of Government Ethics shall have exclusive authority to interpret, administer, and enforce these provisions as applied to Federal officers and employees in the executive and judicial branches of Government. The Senate Select Committee on Ethics and the House Ethics Committee shall have exclusive authority to interpret, administer, and enforce these provisions as applied respectively to the Members and employees of the United States Senate and to the Members and employees of the United States House of Representatives.".

SEC. 27. Section 316(b)(4)(D) of the Federal Election Campaign Act of 1971 is amended—

(1) by striking out "in any calendar year"; and

(2) by adding at the end thereof the following: "An approval given under this paragraph continues until revoked.".

SEC. 28. Section 316(b)(4)(C) of the Federal Election Campaign Act of 1971 is amended by inserting "and families of members" after "members".

SEC. 29. Section 9009(c) of the Internal Revenue Code of 1954 (26 U.S.C. 9009(c)), is amended by striking out paragraph (3) and inserting in lieu thereof the following:

"(3) For purposes of this subsection, the term 'legislative day' means, with respect to statements transmitted to the Senate, any calendar day in which the Senate is in session, and with respect to statements transmitted to the House of Representatives, any calendar day in which the House of Representatives is in session.".

SEC. 30. Chapter 95 of the Internal Revenue Code of 1954 (26 U.S.C. 9001), the Presidential Election Campaign Fund Act, is amended by striking out the text of section 9011 and inserting in lieu thereof the following:

"(a)(1) The Federal Election Commission, the national committee of a political party, or any individual eligible to vote in any election for the office of President is authorized to institute such actions as may be appropriate to implement or construe any provisions of the Federal Election Campaign Act of 1971, or chapter 95 or chapter 96 of this Act, including actions for declaratory judgment or injunctive relief in the appropriate district court of the United States, without regard to the amount in controversy. Actions authorized as separate actions under this section otherwise available to the respondent shall not be based on facts and legal issues arising under enforcement proceedings for which notice has been given pursuant to section 309 of this Act.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection when an action is filed challenging the constitutionality of the Federal Election Campaign Act, or of chapter 95 or chapter 96 of this Act. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case, to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

"(b) Any certification, determination, or other action by the Commission made or taken pursuant to the provisions of such chapter 95 or chapter 96 shall be subject to review by the United States Court of Appeals for the District of Columbia upon petition filed in such court by any interested person. Any petition filed pursuant to this section shall be filed within thirty days after the certification, determination, or other action by the Commission for which review is sought.

"(c) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and expedite to the greatest extent possible the disposition of any action filed pursuant to this section.".

SEC. 31. Chapter 96 of the Internal Revenue Code of 1954 (26 U.S.C. 9031), the Presidential Primary Matching Payment Account Act, is amended by striking out the text of section 9041 and inserting in lieu thereof the following:

"(a)(1) The Federal Election Commission, the national committee of a political party, or any individual eligible to vote in any election for the office of President is authorized to institute such actions as may be appropriate to implement or construe any provisions of the Federal Election Campaign Act, or of chapter 95 or chapter 96 of this Act, including actions for declaratory judgment or injunctive relief in the appropriate district court of the United States, without regard to the amount in controversy. Actions authorized as separate actions under this section otherwise authorized for the respondent shall not be based on facts and legal issues arising under enforcement proceedings for which notice has been given pursuant to section 437g of this Act.

"(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection when an action is filed challenging the constitutionality of the Federal Election Campaign Act, or of chapter 95 or chapter 96 of this Act. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. It shall be the duty of the judges designated to hear the case, to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

"(b) Any certification, determination, or other action by the Commission made or taken pursuant to the provisions of chapter 95 or chapter 96 of this Act shall be subject to review by the United States Court of Appeals for the District of Columbia upon petition filed in such court by any interested person. Any petition filed pursuant to this section shall be filed within thirty days after the certification, determination, or other action by the Commission for which review is sought.

"(c) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and expedite to the greatest extent possible the disposition of any action filed pursuant to this section.".

SEC. 32. For purposes of section 552a(c) of title 5, United States Code, the Federal Election Commission shall not be considered an agency within the meaning of section 551 of title 5, United States Code.

SEC. 33. Section 527(f)(3) of the Internal Revenue Code of 1951 (26 U.S.C. 527(f)(3)) is amended by striking out "section 610 of title 18" and inserting in lieu thereof "section 316 of the Federal Election Campaign Act of 1971".

SEC. 34. For purposes of chapter 6 of title 5, United States Code, the Federal Election Commission shall not be considered to be an agency as defined in section 601(1) of such title.

APPENDIX II

[From the Washington Post, Nov. 17, 1981]

REAGAN AIDE TO PUSH FOR HOUSE GAINS

(BY DAVID S. BRODER)

Newly named White House political director Edward J. Rollins said yesterday that he hopes to mobilize New Right and single-issue groups along with the resources of the White House and the federal government in an all-out drive to give President Reagan a "philosophical majority" in the House of Representatives in the 1981 election.

He conceded that it would be "very hard" for Republicans to win an outright majority in the House but said that a gain of 10 or 15 seats could create a stable base for Reagan's economic program with the help of conservative Democrats.

Referring to groups like the National Conservative Political Action Committee (NCPAC), Rollins said, "Very clearly we will be meeting with them regularly, to tell them where we're heading and let them tell us what they're doing."

In his first meeting with reporters since the White House announced last week that he would succeed Lyn Nofziger as the assistant to the president for political affairs, Rollins said the political office would reduce its patronage operations in 1982 and concentrate on its role as the "driving force" in the midterm congressional and gubernatorial campaigns.

"We will be the ones that target the Democrats we think we can beat," he said, adding that the only House Democrats who can feel safe from challenge are the 20 who supported Reagan's position on all four of the key tax and budget roll-calls last spring and summer. Everywhere else, he said, "wherever there are viable Republican candidates, we will be supporting them" with the biggest treasury the GOP has ever assembled and all the firepower the administration can muster.

Rollins, a 38-year-old Californian, has been Nofziger's deputy and will succeed the longtime Reagan lieutenant when Nofziger resigns in January to resume his private political consulting in Washington.

Nofziger has been involved in a continuing argument with Republican National Chairman Richard Richards, who said such New Right independent expenditure groups as NCPAC "create mischief" and "are not responsible to anyone." Rollins left no doubt he agrees with Nofziger in cherishing such organizations.

He said NCPAC "has made a great contribution in many races" by moving in early and "softening up candidates" with ads attacking their voting records. Those ads have drawn controversy and some observers have contended they have boomeranged, but Rollins said the evidence showed the early attacks were "very helpful."

"With the breakdown of parties," he said, "the role of conservative groups becomes much more important. Putting together a variety of single-interest groups is the wave of the future."

Noting that Republican candidates will not be able to run "against the government in 1982 because the American public views Congress as being controlled by the Republicans," Rollins said the New Right groups could supply "that additional margin" GOP candidates may need.

In outlining his plans for regular meetings with the independent-expenditure groups, Rollins noted that they could not "coordinate" their activities with those of the White House and the GOP campaign committees without running afoul of the election law.

"But they all have high-powered lawyers to keep them out of trouble," he said, adding that he could safely discuss "general strategies" with them without dealing with specific races where they all might be involved.

Nofziger, who accompanied his successor to the lunch with journalists, said that White House hopes of increasing Republican strength in the House and Senate depended on "interest rates being down, inflation in the single digits, and the economy on the upswing, so people feel good about the country."

Nofziger conceded that "at least temporarily," the administration's political momentum had been damaged by the controversies over budget director David A. Stockman, national security adviser Richard V. Allen and Secretary of State Alexander M. Haig, Jr. "But public memories are short," he said. "One victory in Congress, and all this will be forgotten."

Nofziger also defended Reagan's controversial choice of William M. Bell as chairman of the Equal Employment Opportunity Commission. Civil rights groups have attacked Bell, who is black, as unqualified, and a Senate committee last week postponed a vote on his nomination when it appeared he might be rejected.

Nofziger said he had endorsed Bell as a loyal Reagan supporter in Michigan but "never passed judgment on his qualifications. That's the job of the personnel office."

But he said he suppoted the choice because, "to me, the most important thing in politics is loyalty, and we'll get loyalty from him. We'll get done what the president wants to have done. He'll follow administration policy."

APPENDIX III

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REFLECTIONS ON VOLUNTARY COMPLIANCE UNDER THE FEDERAL ELECTION CAMPAIGN ACT

THOMAS B. CURTIS

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Reflections on Voluntary Compliance Under the Federal Election Campaign Act

*Thomas B. Curtis**

In this article, the author, a former Chairman of the Federal Election Commission, speaks from experience about the unique challenge of carrying out the Commission's mandate under the Federal Election Campaign Act: to keep the federal election process fair and to restore to it the confidence of the people. He reflects upon the need for the FEC, in carrying out its duties, to guard against the abuse of first amendment rights, especially the right of the citizenry to petition the government for redress of grievances, and to be alert to possible abuses of an incumbent's "reporting back" duty without stifling the legitimate use of that function. In exercising its authority over federal elections, the FEC must remain mindful of the Constitution's assignment to the states of the dominant role in overseeing presidential elections; the author suggests that, because of these constitutional limitations, the concept of voluntary compliance should and does prevail in accomplishing the Act's purposes. Finally, the author notes that the achievement of widespread voluntary compliance requires a Commission independent of the Congress and the presidency, and pinpoints modification of the FEC's role such that it acquires that independence as one of the most important areas for further work in the elections area.

INTRODUCTION

GOVERNMENTAL REGULATION of the election process is a narrow but vital area of jurisprudence. It is *sui generis* and only limited value may be derived from comparing it with other types of governmental regulation because elections are so different from all other regulated activities.[1] Instead, insight into the na-

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The views expressed here are Mr. Curtis' own and do not necessarily reflect the past or present views of the Federal Election Commission.

[1] John R. Bolton, one of the counsel for James Buckley and Eugene McCarthy in *Buckley v. Valeo*, 424 U.S. 1 (1976), has enumerated some of the salient differentiating characteristics:

> First and most important, political campaigns have definite endings. Although campaigning, particularly for the presidency, has become an increasingly lengthy process, it still ends on election day. Second, no matter how much preparation a candidate may make, it will not be until the campaign itself that most of the difficult legal questions concerning campaign financing will arise and need answering. The time consuming style of regulation typical of other federal agencies

ture of federal regulation of elections must be gained through analysis of its historic and present function in the democratic process.

Elections are the prelude or antechamber of representative government itself and the epilogue or postmortem chamber of its performances. The Federal Election Commission (FEC) was created as an umpire to keep the process fair and to restore to it the confidence of the people. As the second presidential election of the Commission's career approaches, it seems appropriate to review election regulation's fundamental role in American politics and pinpoint the areas where further modification of the Commission's activities is needed to fulfill that role.

Ensuring the peaceful and fair transference of political power among individuals in society is one of the most difficult and sensitive functions of any government. It is here that representative democracy, "the worst form of government except all those other forms,"[2] most clearly proves itself preferable to "those other forms." The more that good sense and careful judgment are devoted to improving the election process, the better this "worst form of government" becomes.

This paper first considers some of the values to which a federal regulator of elections must remain sensitive. In the wake of *Buckley v. Valeo*,[3] much has been said about the freedoms of political speech and association and the federal election laws. Other rights and traditions, however, have escaped the attention of the federal judiciary as it has entered the political thicket. Most important among them is the right of the citizenry to petition the government for redress of grievances.[4] Another is the vital American political tradition that legislative representatives should report back to the people who elected them. In these areas the FEC confronts an unresolved tension: "petitioning" and "reporting back" are deeply at stake when the activities of incumbents are regulated, yet that is precisely where regulation is most needed.

> is thus a luxury that the Federal Election Commission cannot afford except *after* a particular campaign has concluded. Third, campaigns are not highly structured corporate bureaucracies. They often engender spontaneous activity well beyond the effective control of the candidate or his staff.

Bolton, *The Federal Election Commission: Government Astride the Political Process*, AMERICAN ENTERPRISE INSTITUTE JOURNAL ON GOVERNMENT AND SOCIETY, July 1978, at 46.

[2] Speech by Winston Churchill, House of Commons (Nov. 11, 1947), 444 Parl. Deb., H.C. (5th ser.) 207.

[3] 424 U.S. 1 (1976).

[4] U.S. CONST. amend. I.

In considering the proper role of the FEC, it is important to review the Constitution's allocation of authority over federal elections. That the states are assigned the dominant role in presidential elections has serious implications for federal regulation in this area. This paper explores the constitutional limits of federal regulation of presidential elections and concludes that, at least in the area of federal financing for elections to the electoral college, these bounds have been overstepped.

Partly as a result of these historic and constitutional considerations, the Federal Election Campaign Act (FECA)[5] depends heavily on voluntary compliance to effectuate its purposes. The sanctions of both the Presidential Election Campaign Fund Act[6] and the Presidential Primary Matching Payment Account Act[7] apply only to those who accept federal financial assistance for their campaigns. My thesis is that a true concept of voluntarism can prevail in this area of administrative law. At least with regard to the election laws, an approach based on voluntary compliance is viable and is working effectively.

Finally, I shall discuss the independence of the FEC—a concept essential to the full realization of voluntary compliance. In my view, the Commission is not yet sufficiently insulated from the political pressures that naturally emanate from the Congress and the executive branch.

I. THE FEC AND THE RIGHT TO PETITION THE GOVERNMENT

John R. Bolton has asserted that "the Federal Election Commission is—*must be*—different from other agencies because it regulates political speech, not railroad rates."[8] I disagree with Mr. Bolton's facile assumption that there can be no regulation of the election process without impeding constitutionally protected speech or assembly. To my mind, *Buckley v. Valeo* made it clear that the Federal Election Campaign Act neither requires nor allows regulation of protected political speech or activity.[9] If Mr.

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[5] 2 U.S.C. §§ 431–55 (1976); I.R.C. §§ 9001–42 (1976), *as amended by* Federal Election Campaign Act Amendments of 1974, Pub. L. No. 94–443, § 208(a), 88 Stat. 1280, *as amended by* Federal Election Campaign Amendments of 1976, Pub. L. No. 94–283, §§ 101(a)–(d), 90 Stat. 475, 476, 481, *as amended by* Act of Dec. 20, 1977, Pub. L. No. 95–216, § 502(a), 91 Stat. 1565. [The sections of the Internal Revenue Code codified at Title 26 of the United States Code will hereinafter be cited to that Title.]

[6] 26 U.S.C. §§ 9001–12 (1976).

[7] 26 U.S.C. §§ 9031–42 (1976).

[8] Bolton, *supra* note 1, at 51.

[9] *See* 424 U.S. at 39–59.

Bolton had said, "*If not careful* the Federal Election Commission can easily get into regulating political speech," I would agree. Then the more relevant question would arise, "Has the Commission been careful?"

I believe the Commission has thus far exhibited scrupulous regard for first amendment freedoms. But the potential for infringement remains. The Supreme Court in *Buckley* struck the compulsory expenditure limitations from the original Act as unconstitutional "restrictions on . . . protected political expression."[10] Yet, another first amendment concern is at stake in this regulatory program. If the Federal Election Commission is not careful in administering the Act, it can become involved in regulating the right of the people "to petition the Government for a redress of grievances."[11]

In my view, this right is second in importance only to the right to vote itself. In a representative democracy the people must have free access to governmental officials. Although the first amendment explicitly protects the right to petition government, this right has thus far received little attention by the courts. Since the right to petition the government is crucial to a functioning republic, and since it could be endangered by an overly free-wheeling FEC, I believe it merits careful consideration.

In a broad sense, the entire election process is an omnibus petition for redress of a whole collection of grievances, and those engaged in electing are perforce engaged in petitioning. The techniques employed are similar and intermingled. More specifically, the right to petition is at stake when government seeks to regulate the citizenry's communications and activities with incumbents running for office. The problem is of considerable dimension for the FEC because it is constantly dealing with incumbents seeking reelection.[12]

Unfortunately, petitioning government is better known—and not without justification—by its pejorative names: "lobbying" when exercised in the legislative branch and "influence peddling" when exercised in the executive or "independent agency" branch of government. These labels bespeak the ability of incumbents to convert the right of the people to petition government into a means of securing votes. In my view, Members of Congress overreach when they attempt to handle too many constituents' petitions on an individual basis. By acting selectively on particular grievances, a legislator can grant special favors with the expectation of receiving a returned favor, often financial, during the campaign for reelection. This is, of course, a corruption of the governmental process when it is not properly handled.

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[10] *Id.* at 58-59.

[11] U.S. CONST. amend. I.

[12] In the Congress, incumbents have won over 85% of all congressional elections since 1954. TWENTIETH CENTURY FUND TASK FORCE ON FINANCING CONGRESSIONAL CAMPAIGNS, ELECTING CONGRESS: THE FINANCIAL DILEMMA 3 (1970) [hereinafter cited as ELECTING CONGRESS.] Rarely does a one-term President decline to run for a second term.

The biggest, most influential lobbyists in Washington are governmental officials in the executive and regulatory agencies. Accordingly, in pursuing their right to petition the Congress, the people have often found it efficacious to work indirectly through the executive branch. With the power of the President to command the attention of the people when he speaks—"the bully pulpit" as Theodore Roosevelt accurately described it[13]—the executive branch can be effective in both petitioning the Congress and influencing the reelection of its Members. Moreover, the way that the executive and the agencies use their broad, discretionary powers is of vital interest to Members of Congress acting in their representative capacities—and in their desires to be reelected. The executive branch can grant or withhold federal contracts or appointments. It can determine where to locate federal facilities and which laws to enforce vigorously and which to ignore. In promulgating regulations the agencies can determine how fully (or meagerly) to flesh out a statute. All these can be wielded by the executive branch and the agencies as redeemable political favors to influence the reelection of favored incumbents in Congress.

I believe that an incumbent Member of Congress should be reelected for work well done as a legislator, not on the basis of reciprocated favors. A distinction must be drawn between petitioning a Congressman legitimately in his representative capacity and improperly influencing a Congressman as an incumbent desiring reelection. A really thorough program of election regulation would prevent abuse of the right to petition the government.

Unfortunately, the existing laws are woefully ineffective. Section 1913 of the federal criminal code,[14] for instance, makes it ille-

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[13] See Putnam, *Roosevelt: Historian and Statesman*, in T. ROOSEVELT, 9 WORKS OF THEODORE ROOSEVELT x (national ed. 1924).

[14] 18 U.S.C. § 1913 (1976). This section provides that:

> No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay

gal for federal funds to be used to subsidize lobbying. By ensuring an arm's length executive-congressional relationship, enforcement of section 1913 could prevent the use of the executive branch as a vehicle for incumbent Congressmen improperly seeking to please selected, influential, wealthy constituents. Yet, the Justice Department has ignored section 1913 since its enactment,[15] and for years Presidents have openly established lobbying offices in the White House euphemistically called "Congressional Liaison."[16] Such uses of federal funds by the executive are obvious violations of section 1913.

The recently-enacted limitations on outside compensation for Congressmen[17] and controls on campaign financing are important first steps. But much more needs to be done to prevent incumbents, who happen also to be candidates, from acting on the citizens' petitions with a diligence related only to a particular constituent's ability to help secure the incumbent's reelection. I believe the petitioning process itself could be formalized without unduly impeding it. Codes of ethics have been established for Congress as a whole, but special codes should be established for the powerful congressional committees who ultimately act on the people's petitions when they are formulated as proposed legislation. Such codes should also prescribe ethical procedures to guide the actions of House-Senate conferences where differences be-

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> for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation: but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.
>
> Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

Id.

[15] One of the few courts to confront this statute observed: "Unfortunately, in section 1913 plaintiffs have dusted off a statute which because of its obscurity may render impossible a precise judgment concerning the intent of Congress in passing the legislation. There appears to be no record of prosecutions under the statute." National Ass'n for Community Dev. v. Hodgson, 356 F. Supp. 1399, 1403 (D.D.C. 1973).

[16] *See generally* L.B. JOHNSON, *Congress and the Presidency*, in LEGISLATIVE POLITICS U.S.A. (T. Lowi & R. Ripley ed. 1973).

[17] 2 U.S.C. § 441i (1976), *as amended by* Act of December 20, 1977, Pub. L. No. 95-216, § 502(a), 91 Stat. 1565.

tween two versions of legislation on the same subject are reconciled. Much needs to be done to insure that these forums are fair. The adversary method of fact finding and decisionmaking should prevail, as it does in the courts, by forbidding *ex parte, in camera* presentations. Opening these committee forums to all persons would inhibit the improper trading of favors between self-interested incumbents and powerful lobbyists.

It is possible that such a broad scheme of election regulation could infringe upon the constitutionally protected right to petition the government by unduly impeding the people's access to elected officials. Nevertheless, the FEC remains subject to the discipline of the judiciary as a guardian of first amendment rights,[18] and the Congress, in the exercise of its broad oversight powers over the FEC,[19] provides an additional safeguard. And of course the people, acting through Congress, could modify the functions of the FEC by legislation if it should unduly restrict their right to petition their representatives.

II. THE REPORTING-BACK FUNCTION

A significant characteristic of representative democracy is the vital function of legislators to report back to the electorate about governmental developments. Effective democratic government requires an informed citizenry, and Members of Congress have at their disposal numerous means of communicating with constituents. The franking privilege, for instance, allows postage-free mailings,[20] and Congressmen have liberal stationery accounts. The Senate and House both have extensive television and radio recording facilities available to Members free of charge. There are also two well-staffed offices for each Member, one in Washington and the other at home.

Again, the preeminence of incumbent candidates in federal elections presents a dilemma for the FEC. All the perquisites of office do have legitimate functions and, if it is not careful, the Commission could get into unduly regulating what I shall call the "reporting-back-to-the-people" function of representatives. But at the same time, incumbents should not be afforded unlimited free play with the perquisites of office in seeking reelection. Since much of a representative's reporting back involves activity that very closely resembles campaigning, the two are not always easy to distinguish. I used to refer to my own campaigns for reelection to the House simply as "concentrated periods of reporting back under heckling."

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[18] *See* 2 U.S.C. § 437h (1976) (providing expedited judicial review and standing to "any individual eligible to vote in any election for the office of President" in cases involving the constitutionality of provisions of the FECA).

[19] *Id.* § 437c(b)(2) (1976).

[20] 39 U.S.C. § 3210 (1976).

Difficult as it is to distinguish proper use of congressional perquisites for legitimate reporting-back purposes from misuse for campaign purposes, Congress has begun to draw the line. Detailed statutes limit the use of the frank to official, proper purposes.[21] The Senate has sought to limit incumbents' use of the congressional radio and television studios during periods preceeding elections.[22]

Yet, much work remains. Almost a decade ago the Twentieth Century Fund Task Force on Financing Congressional Campaigns recommended "that a federal election commission enforce rules that will prevent members of Congress from using their staff, office, and communications facilities to plan and run their reelection campaigns."[23] For the most part, this plea has fallen on deaf ears. The FEC has never been given specific authority to prevent abuse of the advantages afforded incumbents through their reporting-back duties. The election statutes require only that the monies and services in kind used to influence or elect be reported to the FEC.[24] If the FEC insists on full and timely reporting, the ensuing publicity might eliminate much of the abuse. The problem, however, is that the use of congressional perquisites to get reelected—particularly the use of congressional staff—remains unreported.[25]

The size of the personal staffs of House Members has increased from four in 1950 to eighteen in 1979. This is disturbing because no Member of Congress needs eighteen persons to carry out his reporting-back duties. There was considerable merit in arguing for larger staffs for the increasingly busy congressional committees where the bulk of the legislative research, drafting, and oversight work is done. But in the case of individual Members, the expanded staffs have concentrated on nonlegislative, nonrepresentative functions. A large personal staff provides valuable public relations services free of charge to the incumbent, which a challenger would have to pay for out of campaign funds. Congressional offices have sometimes served as campaign headquarters,[26] and, as the election date approaches, the efforts of the eighteen-person staff shift easily from the routine ombudsman work of acting on constituents' petitions and reporting back to the citizenry to full-fledged campaign work for the congressional employer. Clearly these people should leave the federal payroll while performing campaign duties and be paid by the campaign organization. And although this work constitutes service in kind rendered for a candidate, little of it is disclosed to the FEC.

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[21] *Id.*

[22] *See* S. Res. 110, 95th Cong., 1st Sess., 123 Cong. Rec. S 5397 (1977).

[23] Electing Congress, *supra* note 12, at 26.

[24] *See* 2 U.S.C. § 434(b)(11) (1976).

[25] For a discussion of misuse of congressional staff for campaign purposes, see Electing Congress, *supra* note 12, at 25–26.

Thus, while the FEC must respect the legitimate reporting-back functions of incumbents in Congress, currently there is considerable abuse of the perquisites provided to facilitate the performance of that function. The most the FEC can do is to insist on full disclosure of such activities. And this alone would actually further the purpose underlying the reporting-back function to ensure an informed citizenry.

Before considering controls on the reporting-back activities of the President, it is necessary to recall some important distinctions between the process of electing a federal executive and the process of electing federal legislators. Just as the Constitution prescribes different purposes for the executive and legislative branches, it prescribes entirely separate election procedures for the two types of office. These distinctions bear crucially on the proper extent of the President's reporting-back function and, indeed, on the extent to which the FEC can be empowered to regulate elections to the respective offices.

Because of the nature of his election and his office, the federal executive, unlike his congressional counterparts, does not have a responsibility to report directly back to the people.[27] There is considerable misunderstanding of this point. To a large degree the confusion is the result of the recent popularity of the doctrine now identified pejoratively as the "Imperial Presidency."[28] The presidency also provides a "bully pulpit," as our first Imperial President, Theodore Roosevelt, described it,[29] to harangue the people, and in a message to Congress the President can really address the people over the heads of their true representatives in Congress. This is particularly true since the arrival of the national news wire services, radio, and television. Together, the doctrine of the Imperial Presidency and the "bully pulpit" create the mistaken impression that the President should report directly to the people.

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[26] *See, e.g., Election Unit to Extend Morton Investigation to Others*, N.Y. Times, Jan. 16, 1976, at 34, col. 5.

[27] The President does, however, have a responsibility to report to the people's representatives in Congress. "He shall from time to time give to the Congress Information of the State of the Union and recommend to their Consideration such Measures as he shall judge necessary and expedient . . . ." U.S. CONST. art. II, § 3.

[28] I use the phrase "Imperial Presidency" to connote the notion that the President should formulate substantive policy instead of executing the laws enacted by Congress. *See* M. BURNS, PRESIDENTIAL GOVERNMENT: THE CRUCIBLE OF LEADERSHIP (1965).

The doctrine of the Imperial Presidency is based upon two fallacies. The first is that the federal executive is a "super-legislator" and the sole leader, not merely one of the leaders, of his political party. This myth encompasses the idea that it is the responsibility of the President personally to lead the people and the Congress in political action, as is truly the case with prime ministers of parliamentary governments such as those of Great Britain and Canada.

The second fallacy is that the President of the United States is elected directly by the people as congressional representatives are. Despite all of the public relations camouflage, this is not so. As a matter of fact, in some states the citizen does not even cast his vote for a presidential candidate; he votes for an elector pledged to one of the political parties.[30] Even where the citizen does vote directly for a presidential candidate, invariably all of the names on the ballot have already been selected by delegates to political conventions.[31]

Today's method of electing the President has evolved from the original constitutional plan, but the basic framework of 1789 remains strong. Any national scheme of election regulation must proceed within that framework. It is helpful in understanding this constitutional structure to view it as consisting of three tiers.

The first tier is the selection every fourth November by the people in each state of electors for the electoral college.[32] Actually, the original system has evolved so that the national conventions at which each party's presidential and vice-presidential

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The phrase gained currency, of course, in A. SCHLESINGER, THE IMPERIAL PRESIDENCY (1973).

[29] *See* Putnam, *supra* note 13.

[30] *See* W. SAYRE & J. PARRIS, VOTING FOR PRESIDENT: THE ELECTORAL COLLEGE AND THE AMERICAN POLITICAL SYSTEM 41 (1970).

[31] *Id.*

[32] The Constitution prescribes the first tier procedures as follows: "Each State shall appoint as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress. . . ." U.S. CONST. art. II, § 1, cl. 2.

candidates are chosen constitute, in practical effect, additional "electoral colleges." At the second tier, the groups of electors meet in their respective states and formally cast their votes for one of the political parties' presidential and vice-presidential candidates. The candidate with the most electoral votes in each state is given all of that state's electors—the "winner take all" system. Then, the official results of each state's electoral poll are transmitted to the President of the Senate (the incumbent Vice President) in Washington.[33] Only if no candidate gets a majority of the vote in the electoral college does the third tier procedure for choosing the President and Vice President go into operation. There, the power to choose among the three top candidates in the electoral college is vested in the Congress.[34]

At most, the chosen President should have a responsibility to report back only to the constituencies that actually chose him, namely, to the delegates of the political party whose national convention nominated him and the electors of each state. Because the people are not the President's electoral base, he has no duty to report directly back to them. When he does engage in reporting-back activities, it is not in a genuinely representative capacity. Rather, it can only be a self-serving effort to convince the people of the efficacy of his policies or, in election years, to influence his reelection.

But, as I shall develop presently, it is questionable whether the federal government—Congress, the President, or the Supreme Court—has any constitutional authority over the first two tiers of the three-tier process for selecting the federal executive.[35] Thus, the FEC's powers to regulate or interfere with whatever reporting-back function the President assumes is negligible. Indeed, as a practical matter, because it enjoys first amendment protection, the news media—the critical link in all presidential communications with the people—has more effective power to regulate or select what gets through to the President's constituents than has any agency of the government.[36] The result is that the FEC is virtually powerless to control or regulate any reporting-back-to-the-people function that an incumbent President may assume, even when he does so solely to enhance his prospects for reelection.

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[33] The twelfth amendment sets out the second tier procedures:

> The Electors shall meet in their respective states and vote by ballot for President and Vice-President . . .; they shall name in their ballots the person[s] voted for as President and . . . Vice-President, and they shall make distinct lists of all persons voted for as President and . . . Vice-President, and of the number of votes for each, which they shall sign and certify and transmit sealed to the seat of the government of the United States, directed to the President of the Senate . . . .

U.S. CONST. amend. XII.

[34] At the third tier:

> The person having the greatest number of votes for President, shall be President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. . . . The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President.

Id.

An instance from the 1976 presidential election campaign illustrates the special problems the FEC has in dealing with an incumbent President. In January, 1976, President Ford publicly announced he was placing a former chairman of the Republican National Committee on his staff in the White House as "Counselor to the President."[37] This new aide, however, would also have responsibilities for working with President Ford's reelection committee.[38] As a Commissioner, I stated that this was treading on thin ice. Treating this aide as a White House advisor rather than as a campaign employee would enable the President to avoid charging the aide's salary against the expenditure ceiling.[39] The FEC's dilemma here was that it had no authority to prevent the President from putting people on the White House payroll and then assigning them to go out and organize his campaign for reelection. The most the Commission could do was to insist on full reporting of these campaign expenses and then charge them against the President's expenditure ceiling. Fortunately, the attendant publicity, at least in this instance, led to full compliance on the part of the candidate.[40]

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[35] *See* text accompanying notes 49–64 *infra*.

[36] At least with respect to the politically important broadcast media, however, Congress has assumed a substantial regulatory role because of the limited number of national airwave frequencies available. Thus, under the equal time provisions of the Federal Communications Act, Congress has sought to assure candidates fair access to broadcasting facilities. *See* 47 U.S.C. § 315 (1976).

[37] *Post for Morton Draws Criticism*, N.Y. Times, Jan. 15, 1976, at 17, col. 1.

[38] *Id.*; N.Y. Times, Jan. 16, 1976, at 34, col. 5.

[39] *See* 26 U.S.C. § 9035(a) (1976).

[40] *See* N.Y. Times, Jan. 16, 1976, at 34, col. 6.

Later, candidate Ford's incumbency presented further difficulties. When the Republican National Committee accepted federal funds to hold its national convention, it was bound to spend these funds impartially among candidates seeking the Republican nomination. *See* 26 U.S.C. §§ 9004(a), 9008(c). It could not show any preference for any single

In summary, then, the FEC must seek a balance in regulating incumbents' campaign activities. With regard to the Congress, the Commission must respect the traditional responsibility of legislators to report back to the people they represent. At the same time, however, the Commission should strive to prevent incumbent Congressmen from converting the perquisites of their reporting-back duties into campaign tools. The President has no real reporting-back function. Nevertheless, since the ascendancy of the notion of the Imperial Presidency, Presidents as a matter of course have delivered their messages directly to the people. Because, as I shall explain, the FEC's authority does not extend to the relationship between the President and his constituents, whatever reporting-back the President does is largely beyond the ambit of the FEC.

III. FEDERALISM AND THE FEC

In *Buckley v. Valeo*,[41] the Supreme Court held that the mandatory expenditure ceilings of the original Act offended political and associational freedoms guaranteed by the first amendment.[42] I believe that coercive federal controls over presidential elections would suffer another infirmity. They would violate the constitutional allocation of authority over the electoral college and national political conventions.

The Constitution vests the basic power over federal elections, both presidential and congressional, in the states, with certain preemptive rights in the Congress with respect only to congressional elections. Section 4 of article I provides that: "The Times, Places and Manner of Holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."[43]

Potentially, national authority over congressional elections is plenary, except for the states' choice of a place for senatorial elections. Thus, at least with respect to elections to the House of Rep-

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contender over another. Time and again, the Republican National Committee demonstrated its misunderstanding of this principle. Repeatedly, the National Committee openly treated the President's supporters more favorably than his challengers. In seeking to justify its actions favoring the incumbent candidate, the National Committee's attitude was simply that things had always been done that way.

[41] 424 U.S. 1 (1976).

[42] *Id.* at 37-59.

[43] U.S. CONST. art. I, § 4, cl. 1.

resentatives, the federal government could conduct congressional elections separately from elections to state and local offices. Nevertheless, Congress has historically preferred to rely on the states to organize and operate the machinery of all political elections.[44] Federal candidates, in effect, ride piggyback on the ballot with those running for local office. Congress has never exercised its constitutional choice to preempt state authority "by law," except to set a common date for holding national elections.[45] Its actions under these clauses have been merely additive rather than preemptive.

Elsewhere in the Constitution, Congress is given considerable latitude concerning congressional elections. The Framers granted Congress the exclusive power to "judge" the results of elections of its Members: "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members. . . ."[46] Congress has been vigorous over the years in exercising this power. There have been, I would estimate, about a score of election disputes filed with the House of Representatives and turned over to the House Administration Committee at the beginning of each new Congress for the last fifty years.[47]

Federal authority over the election of the President and the Vice President, in contrast to that concerning congressional elections, is sharply limited. The power over the first tier of this complicated process[48] is vested exclusively in the states.

The Constitution provides that "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . . ."[49] Here, no preemptive rights are vested in Congress. This language makes it clear that Congress has power neither to conduct nor to regulate the initial tier in the selection of the President and Vice President, that is, the elections to the federal electoral college. Authority over these elections is given entirely to each state as the legislature thereof may direct. Congress may determine the time of choosing the electors and the day on which they shall give their votes, "which Day shall be the same throughout the United States,"[50] but this is the extent of its power at this stage. Not until the second tier—the transmission to the Senate of the "lists of all persons voted for as President, and . . . as Vice-President"[51] by each state's group of electors—does federal authority become involved. Thus, with the exception of matters relating to the right to vote, presidential elections have always been administered and regulated entirely under local authority.[52]

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[44] *See generally* A. BICKEL, REFORM AND CONTINUITY: THE ELECTORAL COLLEGE, THE CONVENTION, AND THE PARTY SYSTEM 39-45 (1971); W. SAYRE & J. PARRIS, *supra* note 30, at 64.

[45] *See* 3 U.S.C. § 1 (1976).

[46] U.S. CONST. art. I, § 5, cl. 1.

[47] One can only estimate the number of congressional election disputes because of the spotty records kept by the House Administration Committee, which has had jurisdiction over such matters since the nineteenth century. The *Congressional Record* mentions only those cases which reach a relatively high point of development, so it, too, is of little help. For numerous synopses of pre-1934 cases of disputed congressional elections, see C. CANNON, PRECEDENTS OF THE HOUSE OF REPRESENTATIVES (1934); A. HINDS, PRECEDENTS OF THE HOUSE OF REPRESENTATIVES (1907).

Of course Powell v. McCormack, 395 U.S. 486, 519-47 (1969) contains a lengthy discussion of Congress' power to judge the *qualifications* of its Members-elect.

[48] *See* text accompanying notes 32-34 *supra*.

[49] U.S. CONST. art. II, § 1, cl. 2.

Congressional treatment of the Constitution's silences concerning the procedure for presidential elections confirms the tradition of state control. Unlike the case with disputed congressional elections, there is no provision in the Constitution stating who should judge disputes about electoral votes after each state's electors send their "lists" to Washington at the second tier of the process.[53] When faced with the disputed Hayes-Tilden electoral returns in 1876, Congress created a special electoral Commission.[54] This Commission ultimately accepted the returns as certified by recognized state authority, declining to reexamine the state certification.[55] The result was codified,[56] and today Congress will regard any state law resolution of a controversy concerning the appointment of presidential electors as conclusive.[57]

The Constitution was also silent on how a new President should be chosen in the event both the President and Vice President die in office. Congress often sought to cover this gap by statute.[58] Eventually, however, the twentieth and twenty-fifth amendments were ratified, giving Congress explicit power to legislate in the area.[59] That constitutional amendments ultimately were deemed appropriate suggests that the earlier statutory solutions stood on shaky ground and affirms the paucity of congressional authority over the means of selecting Presidents.

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[50] *Id.* art. II, § 1, cl. 4.

[51] *Id.* amend. XII.

[52] *See* A. BICKEL, *supra* note 44, at 39-45; W. SAYRE & J. PARRIS, *supra* note 30, at 67, 87.

[53] *See* note 33 *supra*.

[54] Act of Jan. 19, 1877, ch. 37, § 2, 19 Stat. 227.

[55] D. MALONE & B. RAUCH, CRISIS OF THE UNION 336-38 (1960).

[56] Electoral Count Act of 1887, ch. 90, § 2, 24 Stat. 373 (codified at 3 U.S.C. § 5 (1976)).

[57] 3 U.S.C. § 5 (1976).

[58] *E.g.*, Act of Mar. 1, 1792, ch. 8, § 1, 1 Stat. 65; Act of Jan. 19, 1886, ch. 4, 24 Stat. 1; Act of July 18, 1947, ch. 264, 61 Stat. 380; Act of June 25, 1948, ch. 644, § 19, 62 Stat. 677.

Furthermore, as every student of American history knows, political parties were not provided for in the Constitution. The political parties developed in the nongovernmental sector of society and they remain to this day essentially private organizations.[60] Any governmental regulation over political parties has historically been exercised at the state, not the federal, level.[61] Indeed, the major parties are charged with much of the responsibility for conducting the elections.[62] Private individuals and the states have always determined the procedures to be used for selecting delegates for national political conventions.[63]

What these constitutional and historical considerations mean for the current election laws is plain. In my view, it is doubtful whether the federal government—which would be the Congress if any branch at all—has any power to interfere with or regulate the electoral college or national conventions. Thus, the constitutionality of the federal election laws which provide federal financing for the first tier of the presidential election process is highly questionable. To the extent that the federal election laws intrude coercively into this historical domain of the states, they offend the principles of federalism underlying the Constitution's allocation of authority over national elections.[64] It is for this reason that the FEC must rely so heavily on voluntary compliance, rather than governmental compulsion, to effectuate its purposes.

IV. VOLUNTARY COMPLIANCE

A spirit of voluntarism pervades both the title 2 reporting provisions and the title 26 funding provisions. Under the latter, it is optional for presidential candidates and political parties to accept federal financial assistance. The sanctions set out in the statutes depend entirely upon contractual relationships between recipients of funds and the United States. To receive assistance for presidential primary campaigns, candidates essentially enter into contracts in which they "certify" under the threat of perjury sanctions that they will abide by the expense and contribution limitations[65] and "agree" to furnish the FEC with their records and to submit to an FEC audit.[66] Similar stipulations accompany the receipt of funding for the campaigns preceding the November election.[67]

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[59] U.S. CONST. amend. XX, § 4, amend. XXV, § 4. *See also* 3 U.S.C. § 19 (1976); 3 U.S.C.A. § 19 (Supp. 1979).

[60] For a discussion of the local, private nature of political parties, see Ripon Soc'y v. National Republican Party, 525 F.2d 567, 574–89 (D.C. Cir. 1975).

[61] *See* P. ODEGARD & E. HELMS, AMERICAN POLITICS: A STUDY IN POLITICAL DYNAMICS 671–79 (1938); Starr, *The Legal Status of American Parties*, 34 AMERICAN POL. SCI. REV. 439, 685–88 (1940).

[62] *See* C. ROSSITER, PARTIES AND POLITICS IN AMERICA 40–42 (1960).

[63] *See* Ripon Soc'y v. National Republican Party, 525 F.2d 567, 588 & n.63 (D.C. Cir. 1975).

[64] In 1976, the FEC failed to mention this limitation of federal power in its annual report to Congress. I attempted to alert Congress to the constitutional question in a statement of dissent. Dissenting views of Commissioner Curtis to the FEC Report to the Congress on Selection of Delegates to the National Party Conventions (on file with the FEC).

In light of the constitutional considerations discussed earlier,[68] it is hard to see what the Congress can do other than rely upon voluntary, contractual agreements in seeking to regulate the first tier in the process of selecting a President and Vice President. I have some doubt whether Congress can indeed contract to achieve results over which it has not been given jurisdiction under the Constitution.

In any event, it seems rather clear that a candidate or political party disinclined to use federal funds is unaffected by the title 26 provisions. Submission to regulation under them, therefore, is voluntary.

The title 2 reporting requirements also reach those first tier electoral activities that are beyond the federal sphere. To the extent that they are coercive, their viability—again, in light of the Constitution's allocation of authority over elections—is open to question. Fortunately for the sake of constitutional principles of federalism, effectuation of the title 2 provisions rests, as a practical matter, almost entirely on voluntary compliance, rather than federal compulsion.

Although the title 2 provisions authorize the Commission to initiate civil actions to enforce the Act,[69] the FECA specifically directs the Commission "to encourage voluntary compliance."[70] Moreover, the Commission must "make every endeavor for a period of not less than 30 days to correct or prevent [any apparent] violation by informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement with the person involved. . . ."[71] During the first year of its operation, the FEC established a policy of making every effort to eschew compulsion.[72] In my opinion it is only this overriding spirit of voluntarism that can justify federal regulation of those historically local aspects of presidential elections.

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[65] 26 U.S.C. §§ 9033(b)(1), (4) (1976).

[66] *Id.* §§ 9033(a)(2), (3) (1976).

[67] *Id.* §§ 9003(a), (b)(1), (2) (1976). The expenses of political parties accepting federal funding for their national conventions "may not" exceed statutory limitations. *Id.* §§ 9008(d)(1), (2) (1976). Significantly, the language is permissive, not mandatory.

[68] *See* text accompanying notes 48-64 *supra*.

[69] 2 U.S.C. § 437d(a)(6) (1976).

[70] *Id.* § 437d(a)(10) (1976).

In that light, it is necessary to deal with the contention of some commentators that there really is no such thing as voluntary compliance with an administrative agency's directives. An unfortunate attitude which might be described as neo-Machiavellian pervades the literature. Consider, for example, the views of Professor Kenneth Culp Davis. He takes such a cynical view of voluntary compliance in all its manifestations that he refers to it as "coerced consent."[73]

It is important to set out Professor Davis' viewpoint rather fully because it illustrates a widely held, derisive attitude toward administrative law. There is no gainsaying that some of what Professor Davis has to say is regrettably accurate, but if his point of view is basically sound, then indeed there is no such thing as voluntary compliance.

> The supervisory power is the power of an administrative agency to coerce a regulated party by methods other than adjudication or rule making. It is a concomitant of, an outgrowth from, and a substitute for the prosecuting power. In some of the most effective regulatory agencies, perhaps nine tenths or more of the desired results are produced through exertion of the supervisory power.
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> From the standpoint of the overall system, the supervisory power is much in need of attention. . . . The power to prosecute or to withhold prosecution is frequently the power to coerce substantive action. Agencies wield this power to coerce . . . often without procedural safeguards and usually without any opportunity for check through judicial review.
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> . . . .
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> The fact that stipulations and consent orders are based upon consent does not mean that parties are necessarily protected against exercise of arbitrary power. Oft-repeated charges that the [Federal Trade] Commission [, for example,] makes oppressive use of the stipulation procedure by inducing inno-

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[71] *Id.* § 437g(a)(5)(A) (1976).

[72] The Commission resolved early in its career to use the civil enforcement action "only when absolutely necessary." [1975] FEC ANN. REP. 58. Throughout my tenure as a Commissioner, there was no occasion to resort to the civil enforcement action.

[73] K. DAVIS, ADMINISTRATIVE LAW TEXT § 4.06 (1959).

> cent respondents to admit illegality in order to avoid the expense and publicity of a formal proceeding apparently have never been systematically investigated. But the Commission's long-term refusal to accept stipulations in any case unless the respondent admits the facts the Commission alleges has long been adversely criticized.
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> . . . .
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> A dissenting Commissioner recently dubbed the resulting system "regulation by lifted eyebrow."
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> . . . .
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> Much administrative action rests upon the kind of consent which bars the regulated party from effective remedy. Yet that consent is often coerced. . . .
>
> In all such cases the regulated party consents and therefore cannot complain. But to argue that consent should bar further protest is not the same as concluding that justice is necessarily done. On the contrary, the opportunity for arbitrary action is extraordinary, for the decisive determination leads to exertion of pressure through the threat of instituting formal proceedings, and that determination is largely unprotected by procedural safeguards.[74]

I do not subscribe to Professor Davis' thesis that the viability of agency action rests solely upon agency threats to institute enforcement actions. On the contrary, administrative law—and not just the administrative law of the FEC—can be grounded upon a true concept of voluntarism.

The Commission believed that most participants in the political process were genuinely desirous of complying with the law.[75] That, perhaps, is where my viewpoint differs most from that of Professor Davis. As I see it, the relationship between a regulatory agency and the regulated parties, contrary to Professor Davis' assumption, need not be antagonistic. In creating the agencies, Congress often seeks to avoid the antagonistic approach to the maximum extent possible and to gain the compliance of the citizenry without compulsion. After all, every regulated producer (or candidate) is also a consumer (or voter); we are all indirect beneficiaries of sound regulatory programs. Even those subject to a regulatory scheme might benefit from it: witness the motorist who, forgetting traffic regulations, narrowly misses a pedestrian, then parks his car and is nearly struck as he crosses the street.

If we can accept administrative law as a fourth kind of legal process—the judicial, executive, and legislative processes constituting the first three—then, I would submit, there is yet a fifth process. This is the noncompulsory or voluntary process. This fifth process, the voluntary process, has always been a part of every society. Religion and economics, for example, have long been strong motivating institutions in society, but their influence on behavior is not compulsory. Consider also "custom and usage": voluntary, consensual relationships and practices may recur so frequently that over time they become the expected norm, the custom and usage of the field. At some stage customs and usages might assume a compulsory dimension; commercial law, for instance, is substantially founded on established custom and usage. But in the beginning the underlying practices and relationships are voluntary, and governmental compulsion is unnecessary to assure compliance with society's expectations.

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[74] *Id.* § 4.01-.03, .06. Professor Davis set forth a similar observation in the latest edition of this work. *See* K. DAVIS, ADMINISTRATIVE LAW TEXT § 4.09 (1972).

[75] *See* [1975] FEC ANN. REP. 30.

So it should be with administrative law. The federal election laws fit this model well. Title 2 is essentially a disclosure statute. Its theory is that opening political campaigns to public scrutiny will induce voluntary conformity with the societal expectations expressed in the substantive measures of the Act.

A review of the Commission's activities suggests how thoroughly the voluntary compliance concept permeates its administration of the FECA. The goal of voluntary compliance determined the priorities and organization of the FEC from the outset. The idea was that candidates wanted to comply with the law and would comply if they were properly advised of their legal responsibilities. Accordingly, the Commission regarded the development of programs to educate and advise candidates as its key initial task.[76] Prior to the 1976 election, the Commission conducted seminars for political committees across the country.[77] Numerous publications were prepared to explain the law in layman's terms.[78] The *FEC Record* was established to disseminate the Commission's policy decisions. The Commission sent letters explaining the law to each candidate in the 1976 elections[79] and drafted a great number of advisory opinions. FEC field auditors and advisors met with committee staffs and candidates to explain reporting, accounting, and auditing procedures and to establish working, on-the-spot relationships with campaign managers and staff.[80] A toll-free line was established for telephone inquiries.[81] To effectuate the purpose of the reporting provisions of title 2, all campaign reports received were made readily available for public inspection at the FEC's "store-front" Public Records Office.[82] It is this heightened public awareness of candidates' financial activities—and not merely the threat of an enforcement action—that encourages voluntary compliance with the contribution limitations and, for those accepting funding under title 26, the expenditure ceilings.

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[76] *Id.*

[77] *Id.* at 56.

[78] *Id.*

[79] *Id.* at 39.

The topic of voluntary compliance arose frequently during the FEC's early years. In late 1975 and early 1976, just as the Commission was establishing itself, it conducted several audits of candidates and political parties during the New Hampshire special senatorial election. Later these activities were challenged by William Cramer, the general counsel of the Republican National Committee, who inquired under what authority the Commission sent its people to New Hampshire and interposed in the election." I responded that the Commission acted under no authority at all in the sense and tone the question was asked, but only to carry out the concept of voluntary compliance. There is no reason the participants cannot sit down with the umpire ahead of—and even during—the contest to agree upon fair and reasonable ground rules which the umpire will apply across the board.

On many occasions I expressed to the Commission and the staff my hope that the staff would not put on Uncle Sam suits, sit in Washington, and dare the people to violate the election laws as they might be interpreted in the dark recesses of the FEC offices. Nevertheless, the funding provisions could well press the Commission to draw some difficult lines. In May, 1975, Robert Strauss, the Chairman of the Democratic National Committee, challenged the Commission "not to tell us how many balloons we can order for our national convention." I responded with the hope that the Commission would not get into such matters. Yet I had to point out that a future Commission impressed that it was handing out taxpayers' dollars might well undertake a thorough determination of what constitutes "expenses incurred with respect to a presidential nominating convention."[83] This is because "payments [to candidates or parties] shall be used only" to defray such expenses.[84] If the public funds turned over to candidates or parties are used for any purpose other than to defray qualified campaign expenses, the Commission may seek reimbursement.[85]

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[80] *Id.* at 40–41.

[81] *Id.* at 19.

[82] *Id.* at 48.

[83] *See* 26 U.S.C. § 9008(c)(1) (1976).

In all, I believe that the election laws' scheme of voluntary compliance is working. In my view, there are ultimately only two sanctions the FEC needs in order to bring about compliance with the election laws. Neither of them interferes with the voluntary compliance approach or robs it of its meaning by creating a situation of "coerced consent." These sanctions are criminal perjury for false statements[86] and criminal contempt for failing to file timely statements.[87] Both are relatively simple and well established statutory crimes. The FEC can refer these matters to the Justice Department for prosecution and be fairly confident that action will be taken. The Congress thoughtfully provided for the Attorney General to make periodic reports on his actions "until there is final disposition"[88] of such a charge.

V. The Independence of the Commission

The most serious impediment to the success of voluntary compliance is the Commission's lack of independence. The achievement of widespread voluntary compliance requires a Commission in whose motivations and decisions regulated parties can have faith. Credibility is crucial, and the key to a credible FEC is independence from even the appearance of political influence.

The most difficult problems facing the Commission revolve around its relations with the Congress and the President. Unless the Commission is sufficiently insulated against routine political pressures from those currently in office in either branch, the Federal Election Campaign Act can become, as many critics already have alleged, the "Incumbents' Protection Act."[89] Independence is thus imperative if the Commission is to act with integrity. Unfortunately, as things now stand, the Commission is bound too closely to the will of both the Congress and the executive.

The Commission's considerable dependence on congressional favor is practically assured by the requirement that all of its proposed regulations be submitted to Congress for the potential veto of either House.[90] Properly used, this formalization of Congress' oversight responsibilities would serve a valuable purpose in keeping the FEC within the limits of its statutory authority. I believe that Congress usually acts with justification when it seeks to stem the recent tendencies of agencies to go beyond the parameters of the statutes Congress has written. But, unfortunately, the scope of the veto over the FEC's proposed regulations is not limited to *ultra vires* provisions. Twice the Congress has misused the veto procedure as a subterfuge merely to express disagreement with the substance of an FEC policy. By vetoing the Commission's first two regulations both the Senate and the House made it clear that the veto would be exercised simply because one House or the other disagreed with the judgment of the FEC—even though it was rendered within the scope of its statutory powers.[91] Then, in the 1976 amendments, the Congress underscored the general subservience of the FEC by adding new language to the Federal Election Act: "Nothing in this Act shall be construed to limit, restrict, or diminish any investigatory, informational, oversight, supervisory, or disciplinary authority or function of the Congress or any committee of the Congress with respect to elections for Federal office."[92]

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[84] *Id.*

[85] *Id.* §§ 9007(b), 9008(h).

[86] *See id.* §§ 9012(d)(1), 9042(c)(1) (1976).

[87] *See* 2 U.S.C. § 437g(a)(12) (1976).

[88] *Id.* § 437g(b) (1976).

[89] *See, e.g.*, Bolton, *supra* note 1, at 46.

The Commission's dependence upon congressional favor is further illustrated by the fact that the FEC must continually come before the Congress for authorization legislation—as well as for annual appropriations.[93] It is significant that the 1974 statute gave the FEC existence of less than a year.[94] Its first reauthorization request was for a lifetime of only 18 months, yet it was never enacted. Currently, the FEC has a three-year appropriation but no authorization.[95] If it is to be independent of the immediate political pressures of the Congress the FEC must have a permanent authorization or, at the minimum, an authorization of five years. Happily, the appropriation process in the statutes does permit the FEC to present its budget requests directly to the Congress rather than the Office of Management and Budget.[96] Thus, the Commission is free from direct financial dependence on the pleasure of the executive branch.

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[90] 2 U.S.C. § 438(c) (1976).

[91] *See* S. Res. 275, 94th Cong., 1st Sess., 121 CONG. REC. 32321 (1975); H.R. Res. 780, 94th Cong., 1st Sess., 121 CONG. REC. 33674 (1975).

[92] Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, § 101, 90 Stat. 475 (codified at 2 U.S.C. § 437c(b)(2) (1976)).

[93] 2 U.S.C. § 439c (1976).

[94] Federal Election Campaign Act § 210, 88 Stat. 1289 (1974) (current version at 2 U.S.C. § 439c (1976)).

[95] 2 U.S.C. § 439c (1976).

Still there is ample opportunity for incumbents in Congress to snuff out FEC regulations which might have the effect of limiting incumbents' preelection activities. Both Houses are run through standing committees whose membership is selected under the unwritten, but rarely overlooked, seniority rule. Accordingly, the real power structure is in the hands of long-time incumbents who are continually running for reelection.[97] Thus the regulator must answer to the regulated.

In short, as experience shows, the Congress can and will undo anything the FEC does that the Congress does not like. This certainly is the very opposite of creating a Commission which is independent of routine political pressures. It seems to me that vigorous public hearings on the FEC's Annual Reports to the Congress and the President would ensure sufficiently close congressional oversight without threatening the Commission's independence.

As a Commissioner, I often urged that the FEC formalize its relations with the Congress so that it could retain as much independence as possible.[98] As early as May, 1975, I suggested that we channel all of our communications with the Congress through the Chairman's office both for the sake of efficiency and to be certain that our relations were proper. This met with indifferent response.

It still merits emphasis that section 1913 of title 28 broadly prohibits the use of federal money in communications with Members of Congress except with "express authorization by Congress" or "through the proper official channels."[99] Even if this section were not in the Code, it would be wise for the relationship between the Congress and the FEC to be as much at arm's length as possible. There is no reason for the FEC to deal with the Congress other than through the official channels set out in the FECA. Thus, communications should be strictly limited to appropriation requests,[100] the required reports containing recommendations for legislative or other action,[101] advisory opinions written at the request of individuals holding federal office,[102] and the procedure spelled out for sending proposed regulations to the Congress.[103] Of course, the Secretary of the Senate and the Clerk of the House, as nonvoting members of the Commission, provide routine, more casual channels. But maintaining a healthy, formal distance between the Commission and the Congress will surely promote the Commission's independence.

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[96] *Id.* § 437d(d)(1) (1976).

[97] This power is concentrated particularly in the House Administration Committee, and a Subcommittee of the House Appropriation Committee, the Senate Rules and Administration Committee, and a Subcommittee of the Senate Appropriation Committee.

[98] *E.g.*, Memorandum from Commissioner Curtis to Commissioners (Nov. 3, 1976) (on file with *Case Western Reserve Law Review*).

[99] For the text of 18 U.S.C. § 1913 (1976), see note 14 *supra*.

[100] 2 U.S.C. § 437d(d)(1) (1976).

A most unfortunate development concerning the composition of the FEC as it bears on its independence is the Supreme Court's decision in *Buckley v. Valeo*.[104] Concentrating the power to appoint the Commissioners in the hands of the President is a serious step backward from the innovative concept in the original law, which provided for a tripartite appointing authority—two Commissioners by the Senate, two by the House, and two by the President. An important purpose of the law, as even the *Buckley* opinion perceived, was to restore the confidence of the people in the American political system.[105] Thus, it was crucial to split whatever influence, real or imagined, might be gained from the power of appointment. Now, as a result of the *Buckley* decision, the possibility of self-aggrandizement by incumbent Presidents looms larger. Very conceivably, an executive could pack the Commission with loyal favorites.

In addition, the six-year term of the Commissioners[106] is probably too short to allay the pressures that could be applied by incumbent Commissioners seeking reappointment. The FECA does permit the Commission to elect its Chairman.[107] This is a step toward independence; in some regulatory bodies the President chooses his own Chairman.[108] However, the current practice of rotating the FEC Chairmanship and limiting it to a one-year term[109] tends to weaken this advantage.

The Act keeps the criminal enforcement power in the hands of the Justice Department despite that Department's deplorable record in enforcing violations of the federal election laws going back to the Corrupt Practices Act of 1909.[110] Too easily the President can apply pressure on the Justice Department for his own benefit or for the benefit of incumbent Congressmen in hopes of getting reciprocal favors. This underscores the danger of vesting the entire appointive power in the President, as is necessary after *Buckley*. Fortunately, the Justice Department is required to submit reports to the FEC about its progress on any matter the Commission refers to it.[111] This exposure should discourage foot-dragging in the executive branch.

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[101] *Id.* §§ 437d(d)(2), 437e (1976).

[102] *Id.* § 437f(a) (1976).

[103] *Id.* § 438(c) (1976).

[104] 424 U.S. 1 (1976).

[105] *Id.* at 25–27.

[106] 2 U.S.C. § 437c(a)(2)(A) (1976).

[107] *Id.* § 437c(a)(5) (1976).

[108] *See, e.g.*, 15 U.S.C. § 41 (1976) (Federal Trade Commission); 47 U.S.C. § 155 (1976) (Federal Communications Commission).

[109] *See* 2 U.S.C. § 437c(a)(5) (1976).

VI. CONCLUSION

The FECA brings campaign activity into the light of public scrutiny. That alone should further the integrity of the American political process. The watchful eye of the people naturally encourages voluntary compliance. Since, as I believe, most participants in the political process really do want to follow the law, the concept of voluntary compliance is eminently suitable for election regulation.

The desirability—indeed the necessity—for voluntary compliance in the area of federal elections is rooted in the character of the American democratic process. The right of the citizenry to petition the government for redress of grievances (along with other first amendment freedoms), the traditional duty of congressional representatives to report back to the people, the constitutional limitations on the proper sphere of coercive federal elections activity, and the fundamental importance of voluntary compliance to the entire scheme of the Commission's existence require that every effort be made to see that voluntary compliance works. At the same time, these considerations raise important challenges for those who seek to further the goal of voluntary compliance: There must be a greater effort toward insuring that incumbents do not use the perquisites of their reporting-back function to get reelected, and toward insuring that the Commission becomes truly insulated from potential political influences of incumbents in the Congress and the presidency.

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[110] *See* Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U. L. REV. 900, 905–06 (1971).

[111] 2 U.S.C. § 437g(b) (1976).

APPENDIX IV

REFORM AS BOGEYMAN: THE LAW IN SEARCH OF A CONSTITUENCY

STATEMENT OF BILL LOUGHREY, LEGISLATIVE ASSISTANT, OFFICE OF SENATOR ARLEN SPECTOR (FORMER DEPUTY DIRECTOR, FEDERAL ELECTIONS COMMISSION)

The campaign reforms of the 1970's were enacted in response to the widespread corruption in campaign financing and public disillusionment with the role of money in politics. The reforms provide a comprehensive scheme for regulating the financing of campaigns. The reforms require public disclosure of how all campaign funds are raised and how they are spent, set limitations on contributions to candidates and their committees, prohibit corporate and labor union contributions, provide public funds to Presidential candidates, and limit expenditures in Presidential elections.

Since their passage, however, these reforms have received widespread criticism that is largely unjustified. Thus the past few years have seen a number of studies critical of the law, as well as growing criticism of the reforms from throughout the political spectrum. Many of the analyses have used faulty or erroneous data. In addition, many of the criticisms appear to be over-reactions by persons whom the reforms regulate. This article attempts to reevaluate the data used in previous studies and respond to some of the criticisms of the reform laws.

Not only are some of the most vehement critics officeholders, politicians, political consultants and political activists—i.e., the people who are regulated—but also many journalists, political scientists and political commentators appear to have accepted these critiques wholesale and repeat them, seemingly without critical examination. In short, widespread consensus has been building on the reputed ill-effects of the reforms, without general acknowledgment of their overall positive impact. Within the political community the view is also widely accepted that campaign finance reforms are anti-party, pro-incumbent, overly bureaucratic, and even anti-reform. These beliefs regarding the effects of the reforms appear to be based on a number of assumptions, most of which rest on misinterpretations or run contrary to the facts.

First assumption: Campaign finance reforms have failed to achieve their original goals

Campaign financing reforms were enacted to curb many of the abuses and excesses that were exposed in the 1960's and early 1970's. The original goals of these reforms were to bring into public view how campaign funds are raised and spent, limit contributions by wealthy individuals, provide adequate funding for Presidential candidates through public financing, and set up an independent enforcement agency to monitor the administration and enforcement of these laws.

Measured against these original goals and objetives, the reforms have been nearly an unqualified success. Public disclosure of campaign contributions and expenditures is now widely accepted. Compliance with the reform legislation has been remarkably uniform, and political campaigns now routinely report how they raise and spend funds. News stories regularly communicate to the public the details of the way campaign funds are raised and spent.

Public financing of Presidential campaigns has been successful, most of the abuses and excesses of the old system having been eliminated. Campaigns have almost universally adhered to the contribution limitations. There have been almost no instances of big contributors circumventing the law by secretly giving large amounts to political campaigns. In 1976 and 1980, for example, over 700,000 contributions totaling approximately $30 million were raised, and used to obtain matching public funds. The average contribution was less than $40 in both elections. This is a dramatic change from the financing of the 1972 Presidential campaign, when only 534 contributors gave $117,221,631, an average of $32,250 per individual. That result seems to be precisely what the reformers originally intended—a rebirth of the small contributor and a reduction in the influence of big contributors.

On the other hand, this legislation was not intended to reverse the long-term decline of the political parties, prevent the direct bribery of public officials, or permit campaigns to continue their unregulated, free-wheeling ways of raising and spending funds. Political commentators and politicians who expected campaign reform legislation to meet such goals or cure such ills have understandably been disappointed

Second assumption: The new reform laws have caused campaigns to be underfunded

Long before the enactment of the campaign laws, many political observers and most experts on campaign finance considered national political campaigns to be inadequately funded. A special task force commissioned by President Kennedy in the early 1960's came to this conclusion, and the same theme was voiced throughout congressional hearings and debate in the early 1970's.

The public financing provisions of the campaign law have been successful in helping to remedy this problem, contrary to critics' arguments that limitations on contributions and expenditures have drastically reduced the availability of campaign funds. Thus the amount of public funds provided to Federal campaigns is far greater than the funds that are no longer contributed because of the limitations.[1] Since the enactment of the campaign law, the amount of funds available to Federal campaigns has increased significantly, total spending by non-Presidential committees rising 90 percent (after adjustment for inflation). The increase has been over 50 percent for congressinal general election campaigns. Total spending for all Federal committees (including Presidential) increased from $290 million in 1972 to $406 million in 1976, and will approach $800 million in 1980.[2]

Third assumption: The campaign reform law is an "Incumbents' Protection Act"

The most frequently heard criticism of the campaign law is that it has helped to insulate incumbents from defeat. But in fact, these laws are not responsible for incumbents' fundraising advantages over challengers. It is a fact of political life that the victor gets the spoils, while the loser goes into the debt. Consequently campaigns seen to be in greatest need generally have the most trouble raising money, while campaigns that need funds the least usually have large surpluses. For example, incumbents have traditionally raised more funds than their challengers, and winners have raised far more than losers. Since the majority of candidates are either losers or challengers, a disproportionate number of campaigns will inevitably be underfinanced.

We would have the phenomenon of underfunded losers and challengers regardless of the enactment of the reform legislation. Moreover incumbents' historic fundraising advantage over challengers has actually declined since the reforms were enacted. Admittedly there is no way presently to determine whether this resulted from the reform, but the following data give strong support to the argument that the legislation has not been an "Incumbents' Protection Act." Thus prior to the 1974 reform, incumbents outspent opponents by almost 2 to 1. Since 1972, spending by challengers has increased at a much faster rate than that of incumbents, 53 percent to 31 percent. By 1978, the incumbents' margin had been reduced to about 3 to 2.

Even more significant are spending patterns in closely contested races, where money has a greater potential impact. Since 1972, the rate of spending increases for challengers in close contests has been 64 percent—almost double that of incumbents.[3] In 1978, for the first time ever, challengers actually outspent incumbents in marginal races by an average of $212,500 to $200,000.

Furthermore, the reelection success of incumbents has declined since enactment of the campaign reform laws. Incumbent Presidents Ford and Carter ran under the new campaign financing laws, and both lost. Previously, in this century, nine incumbent Presidents ran for election, and only one lost. The reelection success of Senate incumbents has declined from 75 to 85 percent (between 1970 and 1974), to 60 to 65 percent (in 1976 and 1978), to only 55 percent (in 1980). While there was no parallel change in the reelection success of House incumbents, a record number of the members retired in 1976 and 1978, many of whom did so to avoid an anticipated defeat.

Fourth assumption: Contribution limitations have stifled fundraising and impoverished campaigns

Both the media and campaign finance experts have greatly overestimated the impact of increases in the contribution limitations. In fact, increases in the contribution limitations would have only a negligible impact on the amounts of funds that could be raised.

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[1] Author's analysis based on Federal Election Commission data and Herbert Alexander's "Financing 1972 Elections," 1976, D.C. Heath Company.

[2] Ibid.

[3] These figures represent the author's analysis, based on FEC data and "An Analysis of the Impact of the Federal Election Campaign Act, 1972-1978," Final Report to the Committee on House Administration of the United States House of Representatives, by the Campaign Finance Study Group, The Institute of Politics, Harvard University, May 1979.

For example, an individual is limited to $25,000 in contributions to all federal committees per calendar year. If the limitation were raised to $50,000 or $100,000, this would increase the amount of funds available to campaigns on an estimated 0.5 percent.[4]

Similarly, raising the $1,000-per-election limitation to $3,000 or $5,000 per election would not significantly affect fundraising in congressional races. A $3,000 or $5,000 limitation would produce only a 2 percent to 5 percent increase in funds for House races, and probably a 7 to 10 percent increase in Senate races. (Admittedly there would be a significant increase of 20–35 percent in Presidential races, because of the large number of $1,000 contributors to Presidential campaigns.)[5]

Fifth assumption: The role of political parties in campaigns has been diminished

A frequent criticism of the reform laws is that they are contributing to the decline and destruction of the political party system. Actually, the reverse is true. During the late 1970's, the Republican Party reaped an unprecedented financial bonanza, and the Democratic Party has been able to avert financial disaster, because of the campaign finance laws. The campaign law has resulted in millions of additional dollars being contributed to the two national committees and to state and local party committees.

The contribution limitations have been criticized for restricting the amount of funds that can be given to political party committees. But actually these limitations have had only minimal impact. In 1972, for example, none of the direct contributions by individuals to political party committees would have been precluded by the reform law's contribution limitations. All contributions to State and local party committees also would have been permissible.

Prior to the enactment of the campaign reform law, individuals simply did not donate large amounts of funds to party committees. Instead, they gave their major contributions to Presidential candidates, and to a much lesser extent to congressional candidates. After the contribution limitations were enacted, many of these contributors were for the first time encouraged to give large amounts to party committees. Without the law, much of this money would undoubtedly still be going into the coffers of Presidential and congressional campaigns.

Figures have been cited purporting to demonstrate that political party support of congressional candidates has declined by up to 65 percent since 1972. But in fact the total funds spent by political parties on behalf of federal candidates *increased* 37 percent between 1972 and 1976 (presidential election years), and 125 percent between 1974 and 1978 (congressional election years). Furthermore the funds raised by national party committees have risen dramatically (by 200 percent), and almost all categories of party fundraising have increased since passage of the 1974 law. (The discrepancies between the alleged decline and the actual increases can be attributed to the critics' misinterpretation of the data, their use of noncomparable figures, and their failure to acknowledge the alternative avenues of support available to political parties under the campaign finance law.)

There are several reasons for the increases. With full public funding of presidential candidates in the general election, political parties no longer have to compete with presidential nominees. For example, in 1972, President Nixon's reelection effort raised ten times as much money as the Republican National Committee. But in 1976, after enactment of the 1974 reforms, President Ford raised no funds for the general election. Every two weeks the RNC took in up to $1 million in contributions that would otherwise have gone to Ford.[6] (This figure does not include additional funds given to the senatorial and congressional campaign committees, and to state and local party committees.)

Also with the enactment of campaign reform legislation, party committees have shifted their emphasis away from large contributors and developed a broader base of support. Direct mail, mass appeals and other methods of soliciting small contributors have become a major source of campaign funds.

Most observers commenting on the campaign reform law have uncritically accepted the interpretation that, because the campaign reform limits contributions, it has necessarily restricted the role of the political parties. While in some instances party activity may have been curbed, the overall impact of the reform has been to strengthen the role of political parties in campaign financing.

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[4] Author's conclusions based on FEC data and computer analysis.

[5] Ibid.

[6] Based on author's analysis of Republican National Committee campaign finance reports, 1972, 1976, and 1980.

Sixth assumption: The reforms have increased the dependence of campaigns and the importance of special-interest contributors

Political action committee (PAC) fund contributions to Federal candidates have indeed increased rapidly since the passage of the campaign law, but it can be argued that this was intended by the Congress, which on three separate occasions—in concessions to special interests made to gain support for reform—added provisions permitting those interests to expand their roles in the political process.[7]

In 1971, a number of labor organizations and large corporations that had established PAC's feared that the courts would interpret the reform law so as to prohibit PAC's. Consequently, a number of special interests lobbied the Congress to amend the law specifically to permit their establishment. In 1974, Congress further amended the law to allow government contractors to establish PAC's, and eliminated any doubt as to their permissibility. In 1976, the law was once again amended to permit membership organizations and trade associations, in addition to corporations and labor organizations, to set up PAC's.

These three amendments, which were not considered to be reforms, demonstrate a clear intent of Congress to encourage and increase special interest giving. In return for withdrawing objections to the reforms, the special interests obtained significant concessions that resulted in the rapid growth in special-interest giving.

I believe that the special interests would have obtained these concessions even if there had been no reform legislation. Whenever labor and business can agree on a particular revision to a statute, it is almost invariably enacted by the Congress. Such was the case with the change affecting political action committees. In any event, the increase of special interest money has definitely not been caused by the reforms as such, although it may be a reform-effort byproduct whose consequences were largely anticipated.

Seventh assumption: Independent expenditures, a byproduct of the campaign reform law, have distorted the political process and encouraged negative campaigning and splinter groups

Critics claim that the campaign law encourages negative campaigning and splinter groups by allowing organizations to make unlimited expenditures. They cite the millions of dollars of independent expenditures on behalf of Reagan, and the hundreds of thousands of dollars spent to defeat Senate liberals.

Originally, the FECA imposed a $1,000 limitation on these groups. The Supreme Court ruled in *Buckley* v. *Valeo* that individuals and groups acting independently of a candidate may make unlimited "independent expenditures." Soon after this decision, editorials and headlines noted the "enormous loophole" that the Supreme Court had opened, and predicted that tens of millions of dollars would be spent outside of the regular candidate and party structure. These articles cited the "return to the evils of 1972," "uncontrolled outside money unbalancing the congressional scheme," "quasi-underground campaign organizations run by seasoned professionals," "rendering the contribution limit a nullity by permitting a contributor to spend unlimited amounts on behalf of a specific candidate," and one headline correctly noted "Loophole Aided Reagan Most." Yet when the dust finally settled after the 1976 elections, only $2.2 million independent expenditures had been made, less than 0.5 percent of the money spent on that election.[8]

The same catchwords reappeared in 1980. Newspaper articles spoke of the "Surge in Independent Campaign Spending," "Gold-plated Panel Set to Raise, Spend Millions for Reagan," and ". . . groups which promise to spend millions of dollars on behalf of the Republican presidential nominee." One group claimed that it would spend $3 to $10 million, another $1 to $5 million, a third group $2 to $5 million, a fourth $12 to $15 million, and a fifth, an incredible $20 to $30 million—a total of $38 to $65 million, or twice the funds received by President Carter's campaign. But in reality these groups spent no more than $10–15 million on behalf of *all* federal candidates, although the organizations received many millions of dollars in free publicity. In fact, such independent expenditure efforts were largely the product of media coverage. For example, in 1976, when the National Conservative Political Action Committee (NCPAC) had attempted to influence a number of congressional races through independent expenditures, the effort fizzled for lack of media coverage after expenditures of slightly over $100,000. In 1980, NCPAC initiated the same type of effort, but started earlier and aimed its expenditures at candidates with higher visibility, e.g., Senator Church in Idaho and Senator McGovern in South Dakota. This time NCPAC received the equivalent of millions of dollars in free exposure and publicity, enabling it to raise hundreds of thousands of additional dollars to use against these candidates. Without media exposure the effort might have again petered out, as in 1976.

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[7] Political action committees can be set up by corporations, labor organizations, trade associations, and other groups. While these latter organizations cannot contribute directly to political candidates, they can solicit funds from their employees, members, stockholders, etc., and deposit them in a separate PAC account. These funds can then be contributed to federal candidates.

[8] These figures are actually higher than those of previous analyses. They are based on the author's review of campaign finance reports filed with the FEC.

Further, although the public saw the NCPAC's "negative" effort—to defeat incumbents—as successful, the group's independent expenditures seemed actually to be counterproductive. Thus the six Senate incumbents targeted by NCPAC ran one to three percentage points ahead of the other thirteen Senate incumbents who also ran in both 1974 and 1980.[9] The negative independent effort also helped the targeted candidates to raise funds, the fact of such opposition also being extensively used in the candidate's campaign advertising.

There is also the case of the two "independent expenditure" committees in the 1976 election, that promised to spend millions on behalf of Ford. Their effort failed miserably when the only press attention they could muster was a Wall Street Journal article alleging that the organizers of one committee were pocketing the funds for personal use. Together the two committees were unable to raise and spend more than $200,000 in 1976. In 1980 the media and the press blessed these same "independent expenditure" groups with front-page headlines and editorial columns, thereby giving them the equivalent of millions of dollars worth of exposure. Even with all of this free publicity, however, the groups could spend only about $10 to $15 million on behalf of Governor Reagan.

Further, in this instance, instead of distorting the political process, these groups probably helped to equalize the resources available to the two major party nominees. For example, in 1976 labor organizations spent $8.5 to $11 million on behalf of Jimmy Carter, giving him a significant advantage over President Ford because none of the amounts counted against the overall expenditure limitations. In 1980, labor undertook what was purported to be an even greater effort on behalf of President Carter, and the independent expenditure efforts on behalf of Reagan helped counter-balance this Carter fundraising advantage. Nevertheless if anything, labor's help still gave Carter an advantage, because their efforts could be coordinated with the candidate's own campaign, while the independent expenditure efforts could not. (Note: The campaign laws allow labor organizations to coordinate communications to their members with the candidate's campaign, whereas independent expenditures must be made wholly independent of the candidate's organization.)

Conclusion

The campaign reform law has been almost universally maligned. Politicians would vote almost unanimously to repeal it. Political activists and consultants loathe it because it does not allow them to return to their free-wheeling ways of raising campaign funds and running campaigns. Journalists and commentators have uncritically accepted the notion that the law is not working. Academicians and scholars have produced ill-conceived and misguided studies, incorrectly concluding that the law is anti-political party and pro-incumbent. In fact, the reform has cleaned up our system of campaign financing, drastically reduced the role of big contributors, probably aided political parties and challengers, and bolstered public confidence in the political process.

By and large, the campaign law has accomplished what its proponents originally intended. This does not mean that changes are not needed. The contribution limitations should be raised to compensate for a decade of inflation. The entire area of special interest or PAC giving needs to be examined. Other changes are needed to streamline and simplify the law.

The most important concern, however, is that the nation not return to the old way of fundraising prevailing prior to the recent decade of reform. Both the public and press need to be more skeptical of the widespread criticism of campaign reform legislation.

Campaign finance reform legislation is a law in search of a constituency. It regulates almost every power center in this country—the President, Members of Congress and their opponents, political parties, wealthy contributors, labor unions, major corporations, trade associations, lobbyists, and even the press, the media and federal judges.[10] Many of those who are regulated are making self-serving attempts to reduce the law's effectiveness. The campaign law's only natural constituency to counter all of these opposing interests is the general public. Unless the public mobilizes, the other interests will undoubtedly prevail, and our politics will once again be exposed to the excesses and abuses that traumatized the nation and eroded public confidence in the 1970's.

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[9] Based on author's analysis of election data from 1974 and 1980.

[10] The campaign reform law limits the amount of honorarium which judges may receive from speeches, etc., sets the ground rules for certain types of political debates, and regulates the manner in which journalists and media people travel with presidential campaigns.

APPENDIX V

THE CAMPAIGN FINANCE REVOLUTION (EXCERPTS)

STATEMENT BY NEIL STAEBLER

The change in the treatment of political money in the legislation pased during the five years ending in 1976 takes its place alongside the movement to universal voting rights, the secret ballot, and one man, one vote as an historic watershed in the way the democratic system operates and the way in which it will ultimately be perceived and regarded by citizens.

After 100 years of ineffective state and national efforts, Congress grasped the nettle in three steps—1971, 1974, and (following the Supreme Court decision) 1976. It stopped the secret use of money from unexplained sources, for questionable purposes, in suspiciously larger amounts. Money collected or spent for political purposes is now on display in the proverbial goldfish bowl—reported by candidates, political parties, committees of all kinds, and individuals who operate on their own. Limits now curb the big individual contributors. Special interest groups are balanced and subject to limits. The Presidential campaign is no longer an auction. The new system does not guarantee money or honesty in politics, but it does put the facts on record for all to see and makes those results highly probable.

If revolution seems an unduly strong characterization of what has taken place, consider the century-long evolutionary process that preceded it.

Seventy-five years went by after the inauguration of the "thirteen United States of America" before the country took its first step in political reform; the prohibition of political contributions from naval yard employees. The year was 1867. The next step was the establishment of the Civil Service to prevent the shaking down of government employees. This reform underwent a decade-long struggle, emerging in a recognizable form in 1883.

The accumulation of political malignancies which finally prompted some action included a host of products of Yankee ingenuity applied to the governmental apparatus. Raising money was uninhibited, jobs were auctioned off and jobholders were levied upon or, as the rough term used to describe the process put it, were "maced". Government contracts were awarded with accompanying bribes. Beneficiaries of legislative action or inaction were "shaken down" before or after the event. The great grants of public land, notably to aspiring railroad financiers, occasioned great transfers of money and securities to influence political action. Candidates were bought in wideopen view by groups seeking a voice in Congress or state legislatures; indeed, the easiest way to purchase significant national power was to acquire control over a state legislature and thereby pick up one or two Senators. It was the the notorious Credit Mobilier scandal of Grant's administration that finally aroused the first effective demands for reform.

In spending money to achieve a desired political result, impediments 100 years ago were not very great. Election procedures were loose and informal; individual voters could be bought, tallyers could be bribed, ballot boxes could be stuffed or lost, accounting could be manipulated, voting results could be garbled.

As more systematic campaign practices developed and the electorate expanded, public opinion could be influenced by retainers to newspaper owners and other influential citizens. Irresponsible and scurrilous political tracts were circulated, often anonymously, and put in the pay envelopes of employees. Creditors were recruited to instill the fear of political change or the need of it into farmers and other borrowers.

Efforts were made in many states to outlaw corrupt practices. The first move to ban corporate contributions was made in 1907 at the urging of Theodore Roosevelt. The first Federal Election Campaign Disclosure Act was adopted in 1910. Later, the Federal Corrupt Practices Act of 1925 required the disclosure of receipts and expenditures of committees seeking to influence the Federal elections of Senate and House candidates in two or more states. The Hatch Act in 1940 placed a $5,000 limit on individual contributions to a candidate or a committee. The Smith Connolly Act of 1944 prohibited labor union contributions.

An impressive list, and not without some ameliorative effect, especially in cleaning up corruption at the voting booth. Tombstone voting, ballot box stuffing, miscounting were greatly diminished and money ceased to be a significant element at that level in most states. At this point the emphasis shifted and money was increasingly utilized to determine the choice of candidates and to influence the candidates' later decisions. Ever larger sums of money were involved and would have been caught in the mesh of Federal and state legislation purportedly designed to require disclosure had there been a serious, concerted attempt to compel it.

Instead, every Federal effort and every state effort, with the possible exception of Florida's was amended and watered down. Instead of regulation of political money there was what may be described as a legislative mirage:

Federal candidates were required to file reports of contributions and expenditures with employees of the Senate and House, but there was no mechanism for dealing with omissions, inaccuracies, or even total failure to report.

Such reports, if they were filed, were almost inaccessible to the public and press.

Some limits on the total money raised and spent by candidate committees were imposed by state and federal statutes, but these applied only to single committees; there was no limit on the number of committees that might be formed.

Committees established in the District of Columbia by candidates escaped all regulation.

Contributions by corporations, government vendors and labor unions were prohibited, but the channels for evasion were numerous, well-known, and rarely challenged.

There were limits on the amount of individual contributions to a candidate or on aggregate contributions by an individual donor, but individuals could give to as many committees as were formed.

Presidential candidate finances were subject only to the prohibitions on contributions by corporations and unions; presidential primaries by some additional restrictions in some states affecting contributions to primaries or convention delegates.

The only substantial deterrent was the Pendleton Act which prohibited solicitation of Federal employees under some circumstances.

Summing up, it may be said that there was a facade of regulation, readily evaded, with no responsibility for implementation. It provided only such minimum of deterrence as might grow out of a newspaper allegation or the revelation of a desgruntled employee.

It was difficult to deal with the stalemate that had developed because the public was divided between three attitudes: indifference—the situation is not so bad, why bother; cynicism—it's always been this way, it's the price we have to pay to get things done; and hope—politics can be honest, and in the interest of credibility, it ought to be made so.

Periodically, interest in reform was stimulated by election and lobbying scandals and the ensuing hearings which provided some insight into the workings of the system. President Kennedy appointed a commission to make recommendations. The League of Women Voters and other reform groups kept the subject alive.

Another factor contributing to growing concern was the rapidly escalating cost of campaigning. The last year in which campaign costs rose in some relationship to the increase in population was 1960, when each major party presidential candidate spent about $10 million. Later campaigns escalated spectacularly, largely due to the use of TV, high travel costs, and increase in the number of primary elections, and high cost professional assistance. In each of the next three presidential elections, the outlay rose more than 50 percent over the one that preceded it. Worse, there was no end in sight.

The combination of growing concern over shoddy methods and rapidly growing expenditures finally produced significant action. Senator Russell Long took the first step in 1966 by pushing through Congress the proposal for public financing of presidential elections through the $1 checkoff on income tax returns. Though it was rescinded the next year, it demonstrated that there was increasing backing for some kind of reform. Two groups can claim a significant role in the next moves. One was a fact-collecting organization, Citizens' Research Foundation, which under the persistent direction of Herbert Alexander, produced the only political spending data available to the nation. The other was Common Cause, newly organized by John Gardner, which brought together for the first time in American history a broad based group of citizens determined to lobby for reform.

What the reformers faced, and what Congress struggled with, was one of the most complicated legislative problems any legislative body has ever confronted.

Any attempt to regulate politics raises questions of constitutional rights; how can limits be put on the use of political funds without interfering with the freedom of speech and assembly? Many individuals, parties and political groups compete for political power; how put limitations on their actions which do not discriminate between them?

The American political system is the most complex in the world by reason of the 50 different state jurisdictions, with which national elections are meshed; among the 50 states are widely varying provisions affecting the state candidates, many of which also affect the federal campaign in the state. Many states have primaries, but some do not. In many areas, competition between the parties is less significant than competition within a single party. How impose limits and restrictions which recognize the diversity without arbitrarily effecting a shift of power? In some states, parties are of negligible importance and candidates dominate the political scene; in other areas parties and candidates are both significant in the process. How impose limits on candidates and parties, and within parties upon national, state, and local contributions and expenditures that will not distort or freeze political practices?

In the long tradition of American politics, volunteer activity has played a dominant role, with numerous exceptions for bonafide paid workers or illegal "ringers" in many localities; how impose limits to prevent corruption without wiping out volunteer activity. And finally, a very real problem: every Senator and Congressman voting on political reform was acutely conscious that changes brought about by the Act might jeopardize his or her own future.

The rising sentiment for reform which led to the Federal Election Act of 1971, strongly augmented by the reaction of Watergate, gave rise to the broad amendments of 1974 which, in turn, were significantly amended in 1976 after the Supreme Court decision *Buckley* v. *Valeo*. What finally emerged in 1976 comprised:

Public financing of the presidential general election; public matching funds for presidential primary candidates;

Reporting of all contributions and expenditures by candidates and political committees;

Limits on contributions by individuals and committees;

Establishment of the Federal Election Commission;

Definition of the permissible activities of corporations, unions, trade associations and membership organizations for political purposes.

APPENDIX VI

FEC LITIGATION STATISTICS AS OF NOVEMBER 23, 1981

In 1981, so far, there have been 17 cases filed in which the Commission is involved, and the Commission has resolved 24 cases. During this year, the Commission has won 9 decisions with no appeal pending and lost only 3. With regard to decisions in which some appeal is pending, the Commission has won 5 and lost 2. In addition, 12 cases have been successfully closed through consent orders or voluntary dismissal. The Commission has won 2 cases in the Supreme Court, lost none, and has 2 pending.

Overall since the Commission's reconstitution after *Buckley* v. *Valeo*, 424 U.S. 1 (1976), the Commission has been involved in 171 lawsuits, resulting in 135 decisions or resolutions, and there are 23 pending.[1] Excluding nonfilers, the Commission has won 50 decisions. The Commission has also successfully concluded 41 non-filer cases. In addition, 35 cases were concluded to the Commission's satisfaction through consent orders or voluntary dismissal (usually after settlement of the matter). The Commission has only lost 9 decisions which have reached final resolution. At present, there are 12 decisions which have been rendered but which are still on appeal. Of these, the Commission has so far prevailed in 9 and is appealing 3 losses.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C, November 19, 1981.

To: Senate Rules and Administration Committee (Attention: Elaine Milliken).

From: Joseph E. Cantor, Jr., Analyst in American National Government, Government Division.

Subject: Impact of S. 1851 on Federal Regulation of Campaign Financing.

In accordance with your instructions, I am enclosing herewith a breakdown of the provisions of S. 1851, Senator Marthias' Federal Election Campaign Amendments Act of 1982, in terms of whether they call for more or less Federal regulation of campaign finances.

Twenty-five (25) distinct provisions in this legislation can be viewed in the context of imposing more or less government regulation, with eight (8) of these in the former category and seventeen (17) in the latter. As used in this memorandum, "more regulation" means additional limits, restrictions, or reporting requirements for participants in the campaign finance process (i.e., contributors, candidates, political committees, and parties); "less regulation" means fewer limits, restrictions, or reporting requirements for these participants. Furthermore, in terms of the dollar amount of contribution limits, "more regulation" would indicate lower limits, while "less regulation" would indicate higher limits. The standards used for classification and the assignment of specific provisions into categories, of course, may be subject to differing interpretations.

The attached pages are divided into two columns: "More Regulation" and "Less Regulation." Under each is listed the committee summaries of those distinct provisions which were indicative of a greater or lesser restrictiveness on campaign finance participants. I trust that this breakdown will prove helpful to you.

LESS REGULATION

Section 2

Under paragraph 1 of this section an individual would become a candidate by receiving contributions in excess of $10,000 or by making expenditures in excess of $10,000 or authorizing others to receive contributions and make expenditures in those amounts. Contributions or expenditures in excess of $5,000 is the current dollar threshold for candidacy contained in 2 U.S.C. 431(2).

Section 5

This section authorizes the waiver of pre-election and post-election reports by principal campaign committees of presidential candidates no longer seeking nomination or election to that office. Upon notice to the Commission, such non-active presidential campaign committees may file quarterly reports in an election year.

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[1] The number of decisions or cases resolved, plus cases pending, will not add up to the number of cases filed since some cases are consolidated after filing, resulting in one opinion in two or more cases, and some cases result in more than one final decision.

Section 6

Paragraph 1 would eliminate the requirement for pre-election reports by committees which in previous reports have identified all contributions and expenditures made to candidates in that election. Notice will be furnished to the F.E.C.

Paragraph 2 would provide an option of a bi-monthly rather than a monthly reporting option now available under § 434(a)(4) to all political committees other than candidate committees.

Paragraph 3 modifies § 434(a)(6) with respect to the 48 hour reporting of $1,000 contributors by candidate committees in the following manner: An authorized candidate committee would file in one submission the identification of all $1,000 contributors received in the ten to twenty day period before the election. In the period from ten days to 48 hours before the election, committees would report any additional contributors of $1,000 within 48 hours of receiving a contribution.

Section 7

This section would increase from $200 to $500 the dollar level requiring identification of contributors and receivers of expenditures and disbursements.

Section 9

The dollar level for reporting independent expenditures made by persons other than a political committee is increased from $250 to $500.

Section 10

This section would provide the Commission with general authority to provide by regulation for the waiver in part or in whole of the reporting and recordkeeping provisions of the Act which are unnecessary with respect to particular categories of persons otherwise subject to reporting requirements.

Section 12

This new provision would modify the complaint and enforcement mechanisms of the statute when committees correct violations which appear on the face of their reports. A committee-initiated correction of a facial violation before the next reporting date for that committee removes that violation from possible enforcement procedures. Similarly with the correction of a facial violation appearing on a committee's report within 15 days of notice of a complaint or a Commission review covering that violation, the Commission would be required to dismiss the complaint and take no further action.

Section 18

The limitation on the amount of contributions provided to a candidate committee is increased to $4,000 and the limitation applies to an entire campaign whether the campaign consists of only a primary election or only a general election or both. A new provision is added specifically limiting to $2,000 the amount of a contribution made to a political committee seeking to draft an individual to become a candidate. If the individual becomes a candidate the previous contribution to a draft committee counts against the donor's $4,000 limit for that candidate.

Section 19

The contribution by a multi-candidate committee is changed from $5,000 per election to $10,000 for a candidate's entire campaign whether it consists of a primary election or a general election or both.

Paragraph 2 increases from $15,000 to $20,000 the contribution limit of a multicandidate committee contribution to a national political party committee.

Section 20

The aggregated annual contribution limit of individuals is increased from $25,000 to $40,000.

Section 22

This section amends 441a(a)(6) so as to clarify that the limitations on contributions apply on an election cycle basis. A primary election and a general election in the same year are considered one election for purposes of the contribution limitations.

Section 24

This section would suspend the contribution limits of one individual family member of the candidate. The contributor and the candidate must jointly notify the Federal Election Commission in advance of the family member for whom the limits will be suspended for the candidate's campaign.

Section 27

This section would eliminate the annual solicitation approval required for solicitation of corporate members of a trade association. The member corporation's approval would stand until revoked.

Section 28

This section would authorize solicitation of families of members of membership organizations, cooperatives or corporations without capital stock of their separate segregated funds.

MORE REGULATION

Section 3

This section extends to other committees the requirement in § 432(e)(4)(5) for candidate committees and corporate and labor organization political committees to identify respectively the candidate or the connected organization in the political committee name.

Paragraph 1 requires political committees other than separate segregated funds to include in their name, the name of any connected organization.

Paragraph 2 provides for a committee seeking to encourage an individual to become a candidate to include in their name a descriptive term such as "draft" and the individual's name.

National convention delegate committees which qualify as political committees under the Act are also required to include the word "delegate" in the committee name.

A new paragraph requires the filing of reports under the full name of the political committee.

Paragraph 4 would recognize the use of a political party name by the national committee of a political party and its affiliated, subordinate or auxiliary committees and by state committees of a political party and their affiliated subordinate or auxiliary committees.

Section 4

This new provision would require a political committee to identify in its statement of organization any direct mail or political management or consulting firm engaged by the committee if a committee principal operates or holds an interest in the firm.

Section 8

Three categories of funds spent by corporations and labor exganizations and national banks do not constitute prohibited contributions or expenditures in connection with an election. Only one category is subject to reporting requirements as provided in § 431(9)(A)(iii).

Section 8 of the bill would require these organizations to disclose all three categories of funds: 1) costs of establishing, administering and soliciting contributions for separate segregated funds and 2) costs associated with registration and get-out-the-vote campaigns aimed at corporate shareholders and executive personnel and directed by labor organizations towards their members and families would be reported on a quarterly basis in an election year and twice a year in an off-election year. 3) Costs for corporate and labor organizations communications expressly advocating the election or defeat of a candidate would be reported quarterly in an election year. A pre-general election report would also be required.

Section 17

The prohibition contained in § 439a against use of excess campaign funds for personal purposes does not apply to Senators or Representatives who were in Congress on January 8, 1980. Sec. 13 of the bill removes this exception and thereby makes the prohibition against use of funds for personal purposes applicable to all members of the Senate and the House of Representatives.

Section 19

Paragraph 3 places a $2,000 limit on a contribution by a multi-candidate committee to a political committee seeking to draft or encourage an individual to become a candidate. Should the individual become a candidate, the amount given to a draft committee would be counted against the $10,000 limit.

Section 21

The qualifications outlined for multi-candidate political committees in 441a(4) are modified to require contributions of $250 to each of four candidates before a committee achieves multi-candidate status and the higher contribution limits.

Section 23

The revision made by this section of 441a(a)(8) would require an earmarked contribution made to one committee through another committee to be attributed to the original donor. The current earmarking provision applies only to contributions to a candidate committee. This section would extend the earmarking rules to political committee contributors.

Section 25

This section amends 441d(a) with a new paragraph requiring any communications by a political committee using a variation of the name of a political party to state clearly that the communication is not authorized by any affiliated, subordinate or auxiliary committee of that political party.

Appendix VII

Federal Regulations of Politics Is Good for the Political Process

PRO

(By Fred Wertheimer)

"It is no accident that we have a Congress of the United States increasingly indebted to either big business or big labor," Rep. James Leach (R-Iowa) asserted during debate in the House of Representatives on a bill which would limit the amount of money special interest groups could contribute to candidates. "It is simply a fact of life that when big money in the form of group contributions enters the political arena, big obligations are entertained."

When the framers of our constitution wrote of a government "of the people, by the people, and for the people" they had in mind the notion that all people should have a fair say in the political process that governs them. But today a band of powerful special interest groups are exerting an exaggerated influence on the political process in our Congress through a system of organized campaign giving. Through their political action committees (PACs) corporations, labor unions, trade unions, trade associations and other groups are soliciting funds from employees or members for the purpose of making campaign contributions to candidates for public office.

What is wrong with this kind of "citizen participation" in the political process, as proponents of interest group giving would put it? Essentially one thing. This form of participation has a catch to it that changes the alchemy, so that "participation" comes threateningly close to becoming a way of acquiring undue influence. Contributions by political action committees have a special quality—they are contributions with a legislative purpose. These contributions are generally given by groups which also regularly engage in organized Washington lobbying efforts. This qualitative characteristic of PAC money is recognized in the 1979 report by the Campaign Finance Study Group of Harvard University which found that ". . . PAC money is interested money."

The Washington Bureau Chief of the Wall Street Journal put it:

The bulk of special interest contributions represents a sort of investment in the careers of incumbent Congressmen and Senators with the aim of enhancing the influence of the financing groups. Obviously, this money is given to buy influence.

The investment nature of PAC giving is clearly evident in the PAC's strong backing for incumbents over their challengers—regardless of party. In 1978, for example, PAC's gave $3.3 to House incumbents for every $1 they gave to their challengers.

Justin Dart, Chairman of Dart Industries, which had the third largest corporate PAC in 1978, is unapologetic about his interests. Dialogue with politicians "is a fine thing," he says, "but with a little money they hear you better."

And Senator Russell Long (D-La.), Chairman of the Senate Finance Committee and a thirty-year veteran of Capitol Hill has noticed a miraculous quality to the relationship between campaign contributions and Congressional favors. Campaign contributions, he has said, "can often be viewed as monetary bread cast upon the water to be returned a thousandfold."

Last May, during a meeting of the Senate Judiciary Committee, Senator Charles Mathias (R-Md.) stirred that water somewhat by telling of a phone call a friend of his received. The caller was voicing his opposition to the Illinois Brick bill which was pending in the Committee. Mathias was considered a key vote on the legislation. "You tell Mathias," the caller said "if he doesn't vote our way on the Judiciary Committee, he won't get a penny of our PAC money." Undaunted, Mathias cast the deciding vote in favor of the bill.

Articulated quid pro quos are rare, however. More often, the interrelationship between organized lobbying and PAC contributions is a subtle one, though eminently clear to the participants.

On November 15, 1979, the House of Representatives passed an amendment which essentially gutted the Administration's hospital cost containment bill—a bill which President Carter estimated would save Americans over $40 billion during the next five years. The American Medical Association (AMA) has been the number one contributor to Congressional races since 1974, and was a principal opponent of the hospital cost containment bill. Since 1974 the AMA's political committees have poured nearly $5 million into Congressional campaigns. That investment paid off. A study released by Common Cause showed that of the 234 Members who voted for the AMA sponsored amendment, 202 received AMA campaign contributions. These contributions averaged $8,157 per member for the past two election periods. The 50 leading recipients of AMA contributions who voted on the amendment received an average of $17,300 each during the same period, and all but two voted in favor of the AMA position.

While a variety of factors were obviously involved in the House fight over hospital cost containment legislation, the Common Cause study shows a disconcertingly consistent pattern of columns with large dollar signs from the AMA matched by columns of "ayes" for the AMA position.

The White House called the House defeat of the Administration's proposal, "a blow to the fight against inflation," and a "victory for a highly financed special interest lobby and a defeat for the common good."

This "victory for a highly financed special interest lobby" raises the question: would the outcome have been different under another system of financing Congressional campaigns—a system. for example, like that of the Presidential campaigns which relies on small contributions by millions of citizens through the dollar checkoff? As a New York Times editorial notes: "How often can even scrupulous legislators be expected to forget their dependence on PACs?"

In 1974 Congress enacted a major campaign finance law in response to the Watergate scandals which instituted a system of public financing for Presidential elections and put limits on the amounts individuals and groups could contribute to candidates for public office. But for the past six years, Congress has repeatedly rebuffed attempts to legislate a system of public financing for itself. The public financing system has made Presidential campaigns infertile grounds for PAC giving. Congress, on the other hand, has become veritable mulch for PAC growth. In 1974 PACs gave $12.5 million to candidates for Congress; in 1978 they nearly tripled that amount with $35.1 million in campaign contributions; and more than $55 million in PAC contributions is expected to pour into 1980 Congressional campaigns. There were 608 PACs registered with the Federal Election Commissions in 1974. Today there are 2010.

The Wall Street Journal's Dennis Farney has predicted a certain rise in PAC power if the present campaign finance system is maintained. "If Congress decides to keep the present system," Farney wrote, "more sophisticated PAC techniques are going to replace today's relatively primitive techniques just as surely as guided missiles followed the manned bomber. For in politics, as in warfare, once an arms race gets rolling, it's hard to stop."

Should the political campaign process be federally regulated? Emphatically, yes, to the extent it is necessary to protect the integrity of our political system. The federally regulated system of public financing for Presidential campaigns has taken the system out to the hands of wealthy contributors and special interest groups and given it back to the American people. The system relies on the voluntary dollar checkoff which appears on federal income tax form 1040. By checking off $1 of taxes already owed the government, in 1976 alone 30 million citizens contributed to a Presidential election fund which financed Presidential campaigns. In contrast, 153 individuals contributed $20 million to Richard Nixon's 1972 campaign.

The difference is revolutionary in the historic sense of the word. Public financing is an extension of the basic principle of equal representation that is at the heart of this nation. Congress should act to free itself of the choke leash of special interest domination by instituting a system of public financing for Congressional races.

CON

(By Paul D. Kamenar)

The fundamental presumption underlying the need for regulating the political process seems to be the public's distrust of their elected officials. With the events of Watergate and the recent revelation of the FBI's "Sting" operation in which several congressmen were implicated in taking cash bribes, the public's distrust of politicians no doubt has some basis. The question, however, is whether the Federal Election Campaign Act of 1971, as amended in 1974, 1976 and 1978, has the effect of restoring the public's confidence in the electoral process and whether that law, or any variation thereof, can prevent the scandalous conduct of elected officials. The answer is clearly NO. In the first place, the Watergate figures who went to jail and the current congressmen accused of taking bribes are already covered by federal criminal laws such as obstruction of justice and bribery laws. The federal civil laws such as the Federal Election Campaign Act has created a new agency, a new bureaucracy, the Federal Election Commission, an institution that has not for the most part fostered any more public confidence in the electoral process; in fact, it has had the opposite effect. One must remember that throughout our country's history, the FEC is the only federal agency whose job is to control and regulate political speech, a sensitive core area for the First Amendment.

Consider the FEC's track record, and decide for yourself whether regulation of political campaigns has rooted out corruption:

The FEC spent many weeks (and much tax money) debating a major policy question: Can a congressman print up his campaign buttons and have the name of the presidential candidate appear on the button without half the cost of the price of the button being considered an "in-kind" contribution from the congressman's campaign to the presidential campaign.

The FEC sent one of its top litigators from Washington, D.C. to New Hampshire to prosecute a candidate who failed to file the correct FEC forms for his candidacy. The culprit was an 80-year old war veteran who spent a few dollars in his obviously losing campaign. The judge reportedly chastised the FEC for not having anything better to do. The old man never showed up in court; he was found, sick, in an old age home.

The FEC sued a college student in Federal Court who volunteered his time as an assistant treasurer for a campaign. His crime? The candidate's father died leaving a small legacy for his family. The candidate's mother gave her son (the candidate) and daughter some of these funds. The candidate used some of this money for his living expenses and transferred some to his campaign. The FEC said the volunteer assistant treasurer illegally reported the money coming from the candidate rather than from the mother.

The FEC sued Eugene McCarthy's 1976 campaign committee for failing to correctly report certain honoraria his campaign received from various colleges at which Sen. McCarthy spoke. After two years of extensive litigation and investigation (including the FEC's obtaining McCarthy's campaign bank records without his knowledge, the Federal judge told the FEC they were wresting valuable resources chasing a "will-o-the-wisp" type violation and ruled in McCarthy's favor.

The FEC spotted an outbreak of free speech in New Jersey where a tax reform citizen's group had printed up voting records of various congressmen on public spending. The FEC wanted to expand its jurisdiction to regulate this kind of traditional activity of information dissemination. The case is pending, with the assistance of the ACLU on the defense.

These examples are just the beginning. There are many more that could be cited if there were enough space. And yet, the FEC seems to avoid the major issues, especially if they involve incumbents. It has taken them almost three years to audit the Carter campaign, and they failed to prosecute labor unions which unlawfully used member's dues money for political purposes. The fact is, when one advocates the federal regulation of the elective process one also advocates more regulations, more bureaucrats, more paperwork, and more federal regulation of free speech. That is not to say some regulation may be necessary. Our criminal bribery laws and obstruction of justice laws seem to be adequate. The election laws, on the other hand, have been more of a nuisance to the well-intentioned citizen than of any value to the public. Its effect during the last five years in operation have been to discourage grass roots activity and support. Would you volunteer to work on a campaign knowing that through no fault of your own you could wind up as a defendant in Federal Court? The law has placed a premium on well-financed campaigns which can afford the best legal accounting services, shuts down the "Mom and Pop" type operations and hampers minor party and independent candidates' campaigns.

Mr. Wertheimer of Common Cause, an organization which lobbied for the election law, is deeply alarmed by all the money that is used in political campaigns. Unfortunately we live in a society and an economy where the methods of communicating to the electorate are expensive. In 1976 a sixty-second political commercial on prime time television in a major city cost $4,800. Today that same station charges $7,400. The cost of producing that same commerical in 1976, approximately $4,000; today costs close to $7,000.00. (See New York Times Articles, February 7, 1980 by Adam Clymer, "Inflation and Limit on Contributions Strain Campaign's Budgets".) Common Cause seems to have no problem with Proctor & Gamble's advertising budget which exceeds all campaign spending by several millions, and yet they want to cut down political spending. What we need is more information from our candidates, not less, if we are to choose our leaders wisely.

Mr. Wertheimer seems especially concerned with the source of the political funding; PAC (Political Action Committees). These organizations are affiliated with corporations, unions, or issue-oriented organizations such as Environmental Action's "Dirty Dozen" Committee, or the "Right to Life" Committee. What Mr. Wertheimer forgets to tell his readers and listeners is that the PAC's can get their money from only one source—the people. Corporations and unions are prohibited by law from giving candidates corporate and union treasury money. A PAC essentially functions as a collection point for contributions from employees and stockholders.

In short, the millions of PAC money is actually composed of small contributions. Stripped away of its alarmist rhetoric, the Common Cause crusade against PAC is nothing more than an objection to the fundamental right of freedom of association. Such objections from presumably "liberal" groups such as Common Cause against fundamental First Amendment rights is indeed surprising. The recommendation by Common Cause that all campaigns be fully financed by the federal government, not just the presidential campaigns, is a dangerous notion for many reasons. The principle problem is that once federal funds are used in financing a project, there is essentially no limit to the amount of federal intrusion and regulation of the political process. Decisions as to what a campaign should spend its money on would not be made by the campaign, but by the federal government.

If the government is going to take over the financing of political campaigns from the people, the government may as well select the winning candidate. The electorate turn-out at the polls is already at an all-time low, so we might as well eliminate that problem altogether! Political scientists who have studied the use of public financing in other countries have been critical of its operation. They note that the scheme has a stifling effect on the political system and entrenches the same political parties and candidates. What we need is less regulation, not more. If you agree that public financing is unwholesome, join me and two-thirds of the American taxpayers and check "NO" on any income tax forms when it asks whether you want your tax dollars to finance someone's campaign.

**Republican
Study
Committee**

RSC

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BACKGROUNDER

THE FEDERAL ELECTION COMMISSION -- HOW ELECTION REFORM BACKFIRED

SCOPE: This Backgrounder examines the issues surrounding election reform legislation and the creation and performance of the Federal Election Commission. The study will analyze the history of federal election laws, the "liberal" arguments for election reform regulations, problem areas of the current law, the inadequate "liberal" solutions to these problems, key issues relating to campaign regulation, examples of FEC regulatory abuses, the case for abolishment of the Commission and transferring its disclosure functions to G.A.O. and enforcement powers to the Justice Department, the cost of campaigns, the growth and influence of political action committees, and the needed amendments to the law (the most important being the elimination of contribution limits).

EXECUTIVE SUMMARY

The Federal Election Commission is fundamentally flawed and should be terminated as an independent agency. It has weakened this country's political system and seriously damaged the First Amendment guarantee of free speech established in the Constitution. Its basic structure makes it impossible to reform.

The federal campaign reform laws enacted in the early 1970s were designed to do many things, among them:

-- clean up the political system (especially the abuses revealed by Watergate), and restore public confidence in government;

-- limit the influence of special interest groups;

-- restrict the advantages of wealthy candidates and big contributors;

-- encourage spontaneous volunteer political involvement by ordinary citizens;

-- open up the political process to more people;

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- -- promote more competition in the electoral process by making it easier for challengers to effectively challenge incumbents;
- -- stem rapidly escalating campaign costs; and,
- -- strengthen the role of political parties.

Instead, an excellent case can be made that the exact opposite has happened over the past 10 years. Rather than strengthening our political process, the creation of the Federal Election Commission has actually had a definite "chilling effect" on grassroots interest and participation in politics, protected incumbents from challengers, weakened the role of the political parties, discouraged third party and independent candidates, increased the influence of special interest money, encouraged voter apathy, increased the advantages of the rich over poorer rivals, increased the length and cost of campaigns, and has contributed to public distrust of government and lack of respect for the law due to bureaucratic/regulatory overkill.

It is long overdue for Congress to dismantle the FEC and place its disclosure functions within the General Accounting Office and its enforcement functions back within the Justice Department where they were before 1975. Regardless of when this abolishment occurs, numerous and significant changes need to be made in current election law to ensure free and open elections in the future. By far, the most essential change is the removal of all restrictions on campaign contributions by political commitees as well as individuals. Complete financial disclosure of meaningful campaign contributions and expenditures (along with continued prohibition of direct labor and corporate campaign contributions) form the foundation of an equitable and effective election system.

An informed and intelligent voter is the most important restraint of potential political corruption, not a government agency, such as the FEC. As Senator Roger Jepsen (R-IA) recently stated:

> If individuals want to give time or money to a campaign, that is their right. If candidates want to accept unlimited contributions from individuals or groups (business or labor) that is their right. The important consideration is that the voters will know who is accepting what and make their decisions based on that knowledge. It's about time we recognize the common sense of the American people. When given the necessary information, they can make intelligent decisions without Washington's help.[1] (Emphasis added)

INTRODUCTION (Key Issues at Stake)

The topic of campaign ethics and election law is very complex and raises numerous issues that must be resolved if a free and democratic system is to be maintained. For example:

- -- Where is the balance between the public's right to know who is financing political campaigns and the candidate's right to privacy and his ability to make this information readily available?
- -- How do we address potential political corruption while at the same time not infringe on the Constitutional guarantee of free speech and association?
- -- Who is qualified to run for public office and to what extent should the electorate be limited in its participation in the electoral process?

-- How does one reconcile the apparent inequality associated with the unequal distribution of economic resources with the concept of "one person, one vote?"

-- What effect does money have on the quality of a campaign and the process of producing an informed electorate? Is there a point where campaign contributions and expenditures become "excessive?" If so, when does it reach that point and is it proper for government to place restrictions on this freedom?

-- Is there something inherently wrong with individual campaign contributions and expenditures?

-- Is it helpful for citizens to form sepcial interest groups to lobby elected officials and finance political causes?

-- What exactly constitutes an "election law abuse" within the confines of the U.S. Constitution?

-- To what extent does disclosure inhibit contributions to campaigns by making them part of the official record?

-- What is the best way to promote free and open elections?

These are tough questions that are not easily answered, but they must be addressed in any consideration of election law reform. In fact, a good case can be made that much of the current election law was enacted without really thinking through these issues.

LEGISLATIVE HISTORY OF CAMPAIGN FINANCE LAWS

1907 - Tillman Act -- first federal prohibition on corporate contributions to political candidates.

1910 -- the first campaign disclosure law was adopted requiring House and Senate candidates to fill out financial statements prior to any primaries and conventions. The law also limited the amounts congressional candidates could spend in their pre-convention election efforts. Much of this law was ruled unconstitutional by the Supreme Court in 1921 (Newberry v. The U.S.).

1925 - Federal Corrupt Practices Act -- further extended the prohibition of campaign contributions by national banks and corporations, required limited disclosure of political committee contributions, and limited campaign spending of congressional candidates, but not Presidential or Vice-Presidential candidates. However, the Act could be easily circumvented because of vague definitions and by rendering the committee expenditure limits nearly useless by allowing parties to form committees in each state so that no one committee exceeded the $3 million limit. When considered in the aggregate, candidate spending far exceeded the intended amount.

1940 - Hatch Act Amendments -- barred federal employees from active participation in national politics, limited the amount an individual could contribute to federal candidates, and placed a ceiling on expenditures by political committees similar to the one in the 1925 Federal Corrupt Practices Act. However, these expenditure/contribution provisions were also easily circumvented.

1947 - Taft-Hartley -- prevented labor unions from contributing to political campaigns from their general funds.

1971 - Federal Election Campaign Act -- limited the amount candidates could spend on media advertising, placed a ceiling on how much candidates for federal office could contribute to their own campaigns (although this was later declared unconstitutional), required much more detailed disclosure information, provided for a tax credit for contributions, and established a check-off system to fund Presidential elections.

1974 - Federal Election Campaign Act Amendments -- created the Federal Election Commission to administer the campaign laws, established limitations on contributions to all candidates for federal office from individuals, political parties, and other political committees, modified reporting requirements, and changed criminal penalties for campaign law violations. Individuals are allowed to contribute up to $25,000 a year to political candidates and committees, with a limit of $1,000 per candidate per election and $5,000 per committee. PACs can give up to $5,000 per election to a federal candidate.

However, immediately after the amendments became law, their constitutionality was challenged in court by Sens. James Buckley and Eugene McCarthy, Stewart Mott, the A.C.L.U., and the American Conservative Union. In 1976, the Supreme Court, in Buckley v. Valeo, struck down some of the provisions of the FECA. The Court upheld the contribution limits and disclosure rules, but rejected as unconstitutional the Act's independent expenditure ceiling, its limitations on a candidate's expenditures from his/her personal funds, and its ceilings on overall campaign expenditures. The court also ruled that the process of selecting the Commission violated the Constitution.

1976 - Federal Election Campaign Act Amendments -- In response to the Buckley decision, changes were made in the Act to provide for Presidential appointment of all the Commissioners, along with several amendments with respect to enforcement procedures and the authority of the Commission to render advisory opinions.

1978 and 1979 -- the Congress failed in an attempt to establish public financing for congressional elections and to place tighter limits on the amount of money political action committees can contribute to campaigns.

1979 - Federal Election Campaign Act Amendments -- relaxed filing requirements for "fringe" candidates by establishing a contribution/expenditure threshold of $5,000; attempted to encourage volunteer activity on the part of individuals, parties, and grass roots organizations; changed reporting requirements by simplifying information in reports as well as reducing the number of reports the candidate must file during an election cycle; and raised the threshold for reporting contributions from $100 to $200.

LIBERAL ARGUMENTS FOR ELECTION REFORM REGULATIONS

Prior to 1974, the primary emphasis of campaign finance reform was on extending disclosure rules, and providing tax incentives for people to promote political participation. Public financing was also an issue frequently discussed and partially adopted in 1971. When the Federal Election Campaign Act Amendments were adopted in 1974, the emphasis shifted to a more negative approach of actually limiting individual contributions, restricting party and committee support of candidates, and limiting individual campaign spending. This shift in approach was due in large part to Watergate.

Fred Wertheimer, Senior Vice President of Common Cause, summarized the reform movement of the time when he said:

> We had reached the point in this country where the presidency was on the auction block, where the question of who became an ambassador was a question not of merit but of money, where political decisions were based as much on the capacity to use campaign contributions to buy influence as on anything else. We were faced with a fundamental threat to our form of government.[2]

The primary assupmtion behind this concern was that "money is evil -- money buys influence," and that large campaign contributions are automatically deemed dangerous. Richard Nixon raised an estimated $61.4 million to retain the Presidency in 1972, some $20 million donated by approximately 50 people. In addition, Nixon was accused of giving ambassadorships to high-dollar contributors, exchanging a pledge to raise milk price supports for campaign contributions, and "laundering" contributions through questionable sources for questionable activities.

Other arguments expressed during this period were:

-- No government agency was enforcing federal campaign laws, thereby requiring the establishment of an independent agency: i.e., the Federal Election Commission.

-- As the cost of campaigns was forcing candidates to turn to help from wealthy individuals and business, labor and other organizations, candidates needed to be protected from being obligated to special interests.

-- It was becoming increasingly more difficult for the average, honest citizen to challenge the "entrenched incumbent."

-- Limiting campaign contributions would help equalize influence and promote competition in elections.

-- In order to strengthen the public's faith in government, restrictions on campaign contributions are needed to avoid even the "appearance" of corruption and undue influence.

As a result of the 1972 election, these cries turned into calls for expenditure limits, contribution limits, public financing of elections, and limitations on political parties and committees. However, the call for more government regulation of our political system raised important questions. Herbert Alexander outlines five key questions:[3]

1. Do expenditure limits mean there will be more or less communication between candidates and voters?
2. Do contribution limits and expenditure limits encourage more competition, or do they favor incumbents and discriminate among candidates in differing jurisdictions and circumstances?
3. How will government funding of political campaigns alter the political process?
4. Will government instrusion be an opening wedge for control over various political activities?
5. Are "floors" (minimal levels of public funding) better than ceilings or limits on spending?

One additional question raised during this reform movement is what exactly constitutes "undue" influence? ... and how does one measure this influence? If an elected official listens a great deal to his wife or best friend, are they guilty of having "undue" influence with the representative when compared to an everyday constituent. Is this good or bad?

10 PROBLEM AREAS WITH THE CURRENT LAW

In answering these questions and reviewing the FEC's track record over the past six years, it is obvious that regardless of whatever "abuses" occured in 1972, the cure is now worse than the disease. The '74 and '76 reforms have only made matters worse. The '71 law was never given an adequate chance to work. In respect to Watergate, Senator Eugene McCarthy stated the facts very clearly in 1976:

> All of the prosecutions under Watergate were done without any reference to the Federal Election Campaign Act [of 1974]. All of the convictions had to do with existing law. To suggest that this law [1974 amendments] has any relationship to, or would have prevented Watergate ... is to confuse the issue.... We might say that if we had had this law, Watergate might not have happened. Watergate would not have happened if we had not had Richard Nixon. A lot of things would not have happened, but to say that the Federal Election Campaign Act has any bearing upon Watergate is sheer nonsense.... I think we would have been better off without it. The '71 act was a good act, and the country would be better off without the new federal election act ['74 amendments].[4] (Emphasis added)

The reason we would have been better off without the creation of the Federal Election Commission is the numerous problems it has created. Ten key weaknesses stand out.

1. Incumbents Protected/Challengers Hindered

Incumbent members of Congress have numerous advantages that most challengers cannot match. The incumbent is usually better known, with almost constant access to the press. Everything he does can be made to be "news." The incumbent can communicate with his constituents at public expense using the franking privilege. In 1977, the Americans for Democratic Action estimated that incumbent congressmen have a $567,000 advantage over their challengers. This figure includes staff salary, office space, communication and travel allowances. That figure is much higher today. Incumbents also have access to the Library of Congress and various congressional research groups to assist them in securing vital information and facts needed in a campaign. Challengers enjoy none of these benefits.

To compound the problem, challengers are forced to run for office and make a living at the same time. As John Bolton explains:

> If an employee of a corporation takes a leave of absence from his job to run for federal office and the corporation continues to pay his salary, the corporation has made an illegal contribution. Yet when a member of Congress runs for re-election, his salary is paid by the government and lawfully available to him to spend on his campaign. Thus, while incumbents have control over their own income, the FEC is busily restricting what challengers can do with theirs.[5]

Since challengers do not have access to these benefits, it makes it all the more necessary for them to raise money -- lots of money in most cases if they want to have a fair chance at winning. As a result, it is in the incumbent's direct have a fair chance at winning. As a result, it is in the incumbent's direct interest to have contribution and spending limitations. This is especially true in the early phases of a campaign. It is the unknown challenger who has a critical need for large sums of start up or "seed money" to begin a serious campaign effort. If such a candidate were able to solicit and receive a contribution from a wealthy benefactor, perhaps in the range of $50,000 to $100,000, that candidate could more easily get on the road to a viable candidacy. Disclosure of the name of the benefactor and the amount of the contribution might alleviate any concern over "undue influence" the benefactor might gain over the candidate. It might also be possible to designate an early pre-election period as a time of lax contribution limits in order for candidates to raise "seed" money. However, total elimination of contribution restrictions, coupled with meaningful public disclosure, would be the best way to solve the problem.

Eugene McCarthy needed an influx of large loans and contributions in the early stages of his campaign to finance his challenge to Lyndon Johnson in New Hampshire in 1968. The presidential campaigns of John Lindsay and Terry Sanford in 1972 got off the ground because each found a wealthy contributor to help get them started. Lindsay got a gift of $260,000 from one family; Sanford received $700,000 from a single contributor. Neither candidate made a strong showing, however. But they did not fail to be heard on the issues for lack of money.[6]

Another advantage accruing to incumbents relates to the FEC's paperwork and records regulations. Even to an experienced incumbent, many of the FEC rulings appear confusing, vague, arbitrary, and complex. Inexperienced challengers, who more often are relying on volunteer and part-time help, find it much tougher to comply with the regulations. As a result, the incumbent is in a much better position to avoid problems that could hinder his campaign.

Furthermore, since the FEC must receive its funding from the Congress, historically many of its rulings have been slanted in favor of incumbents.

2. Weakened Party Influence

A second major problem created by the 1974 Campaign Act has been the further weakening of our political parties. The $5,000 contribution limit and the "$.02 per person of voting age" expenditure limit have seriously curtailed the amount of party aid available to its candidates. A Harvard University study in 1979 revealed that in the 1972 House elections, 17% of the money available to House candidates came from party sources. By 1978, that figure had declined to an estimated 4.5%.[7] Final figures from the FEC confirm the Harvard analysis, and preliminary figures for the 1980 congressional elections also reveal party expenditures and contributions for congressional races at or just under 5%.

The current campaign law has worked to separate candidates from their parties in two main ways: 1) contribution limits have forced candidates to seek financing from national sources (such as PACs) rather than the party, and 2) state and local parties are inhibited from supporting candidates due to the numerous FEC regulations and reporting requirements. The paperwork burden adds another disincentive to citizen involvement through their local party.

A further problem is created because of the limited resources due to contribution restrictions. Candidates often find themselves competing with their own party for money from these national sources, such as PACs.

The significance of this decline in party influence cannot be overstated, especially with the tough economic and defense decisions currently facing Congress. Herbert Alexander makes an excellent point when he comments:

> The greater dependence of the candidate on the party, the greater the party's leverage, the greater the chances to achieve some policy coherence and discipline among candidates and elected officials, the greater the chance of mobilizing party majorities for key votes in the Congress -- and, paradoxically, the greater the possible national unity and consensus on some issues. It is easier to get two parties to agree, than 535 fiercely independent members of Congress.[8]

In addition to weakening the role of political parties, the charge has often been heard that the campaign reform laws of the 1970s were designed to protect the Democrat party from Republican challenges. Since the Democrats were the majority party in 1974 when the FEC was set up (and recalling the advantages of incumbency), it is not surprising that former Democrat Senator Eugene McCarthy would state in 1976 that:

> There is no question that this new law [1974 Amendments] gives special preference to the Democratic party ... the Federal Election Campaign Act favored one of the major parties, not both of them. It established the first state political party in the history of this country, which is the Democratic party. And I think that the Democrats who voted for the act more or less intended that this would be the result.[9]

Even though the 1980 elections have temporarily challenged this statement, the fact remains that Republicans and Independent candidates have had to fight an uphill battle due to the current law; and there are still many examples to show how incumbent Democrats can use the law to their advantage. Many experts believe that 1980 was an exception to the one party rule and unless the law is amended to allow for free and open competition, the Democrats will eventually regain control of both Houses of Congress.

3. Nitpicky and "Chilling" Regulations

The FEC has devoted a great deal of its resources and energy towards investigating the most trivial kinds of violations. Actual examples of FEC regulatory excess will be outlined in another section of this paper. However, it is important at this point to note that the heart of the problem revolves around the vagueness and complexity of the statute -- especially concerning the definitions of what actually constitutes a "contribution" and "expenditure." In testimony before the House Administration Committee, this problem was clearly revealed:

> The FECA has grown into a much more detailed and confusing statute. For example, there are least seventeen contribution limitations related solely to the amount contributed, which vary depending on whether the donor or the recipient is an authorized or unauthorized campaign committee, a national or state party committee, or certain other committees. There are three principal definitions of the term

> "contribution," fourteen exceptions to one definition of contribution, five exceptions to the other two definitions, and a substantial number of exceptions to the exceptions.[10] Similar complications are found throughout the statute.

° For example, one campaign in 1980 faced this situation: when does a campaign "sign" become a campaign "billboard?" If a volunteer wants to put a sign in his yard in favor of a particular candidate, he does not have to report it as an "in-kind" contribution. However, if the sign becomes too big, then it becomes a billboard which must be reported as a contribution. One can almost visualize the local party official having to hold a seminar with local volunteers in order to instruct them on the proper size for yard signs. Not only is this a waste of time and energy, but when volunteers are faced with this type of regulation (knowing that a penalty may be imposed on them for violating a rule of which they may be unsure), they quite naturally disappear.

° When does an outside organization (which publishes a paper on where public officials stand on the issues) leave the realm of education and become a political organization? For example, a religious group in the 1980 campaign put out a publication showing where each of the three major candidates (Reagan, Carter and Anderson) stood on various issues of concern to religious-thinking people. The FEC said the group was a political committee, had to file with the Commission, and meet all the contribution and expenditure limits of the Act.

° When does hosting a party in your own home leave the realm of hospitality and enter the area of campaigning? The current law says a person may spend up to $1,000 on hosting a party for a candidate without the candidate having to report it. What if the individual has the party with some other friends as well ... does he split the cost 50-50? What if he bought some extra card tables and chairs for the party which he plans to use in his home later on ... is this a personal expenditure for personal use, or does it have to count toward the $1,000 limit? Why should the federal government have to waste its time with such questions? But under the current law, it must.

° When does taking an individual out to lunch leave the realm of personal friendship and enter the realm of providing refreshments for campaign workers? What if I have already given a $1,000 campaign contribution to someone who is a candidate for federal office. Should I check with the FEC to see if I am in danger of exceeding the contribution limits if I pay for a luncheon for an individual on this person's campaign staff?

° What exactly constitutes an "independent expenditure?" If the spending party happens to know the candidate or his staff, does that constitute "political coordination" and does that person lose his First Amendment right to engage in independent expenditure activity on behalf of that candidate?

There are literally thousands of problems like these that confront the FEC each election year. The more the Commission and the Congress attempt to "fine-tune" the definitions and regulations, the more problems are created. The fact that the Act has had to be amended in 1974, 1976, and 1979 (along with major debate and legislative proposals on possible changes during each and every year between 1971-1980) clearly demonstrates that the political process is too dynamic and volatile to regulate in a static and equitable fashion. As the Supreme Court has stated, the First Amendment "needs breathing room." The FEC and much of the current election law is suffocating the right of free speech and association.

While major Presidential candidates and most business and labor PACs can be expected to acquire the expertise to comply with the FEC rules, it is almost certain that the average congressional candidate, and especially a citizen contributor, may violate the law many times without knowing it. It is almost impossible not to be guilty of some provision of the Act as interpreted by the FEC.

Because a campaign is a short-lived endeavor, candidates need an immediate response to questions they have on whether or not a particular practice is acceptable under the law. Answers given over the phone by FEC staff are often found to be in direct conflict with another FEC pronouncement later on. It often depends who you talk to on any given day. Formal Commission responses vary from a week to several months -- sometimes several years, depending on the nature of the inquiry. For example, the National Right to Work Committee had to wait two years and three months for an advisory opinion that was totally useless when it was issued. This time-consuming manner of regulatory oversight used by other federal agencies is something the political process cannot tolerate. Nor can the Commission expect campaigns to be operated in a tightly-controlled manner as many businesses. Campaigns generate spontaneous activity among many volunteers -- much of which is beyond the reach and direct influence of the candidate or his staff. But the FEC holds both the candidate and the volunteer liable.

The actions by the FEC are often very haphazard, arbitrary, confusing, and inconsistent. John Bolton, a lawyer who helped represent Sens. Buckley and McCarthy in their suit against the FECA has made this important observation concerning the FEC's regulatory practice:

> One candidate may be audited, while another goes virtually unnoticed; one group may seek an advisory opinion from the Commission, waiting for months for a decision, while another more daring group will engage in precisely the same activity hoping to prevail in any ensuing confrontation with the FEC. None of this contributes to "fairness" in the political process, nor does it have anything to do with the central statutory purpose of the FECA -- the elimination of corruption and the appearance of corruption.[11]

To compound the problem, many of the people at the FEC who write the regulations needed to administer the Act have never worked in a campaign and have not had to deal with whether the little old lady's yard sign places her over the $1,000 limit or what dollar value should be placed on a voluntary concert for the candidate by a well-known musician.

It is long overdue for the Congress to end this regulatory abuse of the political process. Does the public really care about 95% of the stuff the FEC is trying to regulate? Many of these regulatory problems would resolve themselves if contribution limits were eliminated.

4. Wealthy Candidates Favored

Election law as it currently stands gives a big boost to those candidates who are personally wealthy. There is no limit on how much an individual can spend on himself. Candidates who are not rich are placed at a distinct disadvantage since contribution limits make it more difficult to raise money. The 1979 Harvard Study revealed that in 1974 challengers (non-incumbents) provided 10.9% of their own campaign money. In 1976, this figure had grown to 17.5%. Ten House candidates spent more than $100,000 of their own money on 1976 campaigns.[12]

The 1976 Pennsylvania Senate race provides a clear example of the use of personal funds. In the Republican primary, "Rep. H. John Heinz III financed almost 90% of his successful campaign against former Philadelphia District Attorney Arlen Specter with loans from his personal fortune -- $585,765 out of a total of $673,869. Specter spent only $224,105 on the primary, according to his campaign reports; of this total, Specter loaned his campaign $38,744. Counting the general election race, which he also won, Heinz made loans to his own campaign amounting to $2,465,500."[13]

Wealthy candidates already have the advantage of name recognition, easier access to wealthy contributors, and fewer problems in securing credit. On the other hand, the argument is often made that public officials who have a personal fortune are more free to vote their conscience and less likely to feel beholden to special interests. However, if one of the original goals of campaign reform legislation was to reduce some of the advantages of personally wealthy candidates over poorer rivals, the law (in effect) has produced the exact opposite result.

If a candidate can spend as much of his own money as he wants on himself, why limit what he can spend on others?

5. Increase in PACs and Special Interest Groups

- Statistics on Growth -

With limitations on individual and party contributions, candidates have had to fill the void by obtaining funds from political action committees. PACs are essentially the political arm of a variety of organizations: corporations, labor unions, special interest lobbies, and non-partisan, ideologically-oriented political groups. PACs can be viewed as groups of individuals uniting together through contributions to support specific candidates.

As the following table (#1) reveals, the number of PACs has grown considerably since the FEC amendments were enacted in 1974. However, it appears the rate of growth has slowed down dramatically and may be peaking. According to the FEC, the number of PACs in existence during the first six months of 1981 increased by only 5%. The normal six-month growth rate since 1978 has been in the 11-14% range. The most dramatic increase in PAC growth was observed between 1974-1976 when the rate approached 90%. This growth was influenced by the FEC's 1975 SunPac decision allowing corporate PACs to solicit contributions from employees. The 1976 amendments modified this to some extent.

Table (#1) PAC Growth -- From 1974[14]

PAC Type	Number Registered with the FEC					(as of
	1974	1976	1978	1980	1981	7-1-81)
Corporate	89	433	784	1,204	1,251	
Labor	201	224	217	297	303	
Trade/Membership/Health	318	489	451	574	577	
Non-connected	-o-	-o-	165	378	445	
Cooperative	-o-	-o-	12	42	38	
Corporation w/o Stock	-o-	-o-	24	56	64	
TOTAL	608	1,146	1,653	2,551	2,678	

As the following table (#2) shows,[15] the percentage of funds raised by candidates from PACs has also leveled off. According to the FEC's files, of the estimated $251.9 million raised by all Senate and House candidates in 1979-80, non-party committees (PACs) contributed $55.3 million (or 21.9%).[16]

Table (#2) Percentage of PAC Contributions of House Races[15 & 16]

1972	1974	1976	1978	1980
14.0%	17.1%	22.6%	25.3%	26.3%

PACs have created quite a bit of controversy in recent years. It is a frequent topic in the press with the innuendo made that PACs are exerting increasing influence on elected officials. Exaggerated headlines and inflated stories like these on the 1980 campaign ran in the Washington Post:

"Election '80 Was Record Year for PACs, Especially Those on the Right" - Jan. 27, 1981

"PAC Donations Promote Corporation Politics" - May 18, 1980

"It's November, and the Corporate PAC Money Trees Are Shedding" - Nov. 1, 1980

"Top Leaders on Hill Got $6.5 Million from PACs in Last Campaign" - April 8, 1981

"A.T.&T. Spending on '80 Elections Tops U.S. Firms" - April 19, 1981

"10 Biggest Political Action Committees Have Cash Galore as Elections Day Nears" - October 14, 1980

"Oil Emerges as Leading Hill Patron" - Sept. 15, 1981, and so on...

What is not explained in most news reports on PACs is the fact that there is a great diversification in the groups that sponsor PACs which have little in common when it comes to politics and positions on the issues. To imply that PACs control Congress is to say that the Realtors, AMA, Gun Owners of America, UAW, AFL-CIO, Auto Dealers, CSFC and NCEC all agree on the issues and work together.[17] Even though PACs gave $20 million more in Congressional races in the 1980 election cycle than in 1978, all other contribution sources also rose just as dramatically. Another important fact needs to be remembered when reviewing these PAC statistics: the inflation rate went up 23.7% from 1979-1980, and there were 2,265 House and Senate candidates in the 1980 election cycle (an increase of 356 candidates over the 1978 election period).[18] With these facts in mind, it is easily seen that PAC spending growth has not been excessive.

With the aid of the following tables, several other interesting facts emerge. PACs are slowly giving a greater percentage of their money to challengers (Table #4) - up from 21% in '75-76 to 26% in '79-80. However, union PACs gave a greater percentage of their money to incumbents in the '80 election period than in 1978 (see Table #3). Although, corporations (business PACs) increased their percentage of contributions to challengers by 10% in the 1980 election cycle over 1978, the clear leader in challenging incumbents were "non-connected" (ideological) PACs like the National Conservative Political Action Committee (NCPAC). (See Table #3).

However, any conclusions drawn concerning PAC contributions to incumbents should be carefully considered. As Stuart Rothenberg recently stated in his study on Political Action Committees:

The conclusion that PACs favor incumbents misses an important point. Political action committees are run by people, and the individuals who make the decisions about which candidates receive PAC money have their own reasons for making those judgments. In 1980, for example, labor PACs gave 71.1% of their contributions to incumbents. Does this mean that they gave indiscriminately to all incumbents? Does the fact that they contributed such a high percentage to incumbents rather than challengers (16.7%) or candidates for open seats (12.2%) mean that organized labor was "following an ideology of incumbency," to quote Fred Wertheimer? Quite obviously, such an assumption is overly broad. Labor PACs tend to support liberal Democrats. Since a number of well-known liberal Senators were up for reelection in 1980 - Bayh, Javits, McGovern, and Culver to mention just a few - it is not surprising that labor political action committees gave heavily to incumbents.[19]

Table (#3) Pattern of PAC Contributions - (by type) [20]
(% given to Cong. Cpgs. in each category)

	Corporations		Labor		Trade		(non-connected) Ideological	
	1977-78	1979-80	1977-78	1979-80	1977-78	1979-80	1977-79	1979-80
Incumbents	59%	57%	59%	71%	60%	64%	26%	32%
Challengers	21%	31%	21%	17%	19%	23%	45%	49%
Open Seats	20%	12%	20%	12%	21%	13%	29%	19%
TOTAL	100%		100%		100%		100%	
Republicans	62%	64%	5%	7%	55%	56%	76%	67%
Democrats	38%	36%	95%	93%	45%	44%	24%	32%

Another interesting observation is the significant "share of the market" held by each of the three major PAC groups (corporate, labor, and trade). (See Table #4) Each group has maintained a substantial slice of the "giving" pie and kept competition among PACs alive. Union PACs outgave corporate PACs in 1977-78, while business PACs took the lead in 1979. (See Table #4) Point #6 (next section) of the paper will deal with non-recorded, union contributions which partially cloud this comparative analysis due to the size of organized labor involvement in elections outside FEC reports.

Table (#4)

Summary and Pattern of[21]
Total PAC Contributions to Cong. Cpgs. (rounded off to the nearest $ thousandth)

	1975-76	1977-78	1979-80
Corporation	$ 6,732,000 (33%)	$ 9,775,000 (28%)	$19,174,000 (35%)
Labor	7,389,000 (36%)	10,314,000 (28%)	13,120,000 (24%)
Trade	2,604,000 (13%)	11,325,000 (32%)	16,091,000 (29%)
Non-Connected	2,343,000 (11%)	2,795,000 (8%)	4,819,000 (9%)
Cooperatives	1,379,000 (7%)	886,000 (3%)	1,382,000 (2%)
Corp. w/o Stock	-not significant-	121,000 (1%)	707,000 (1%)
TOTAL	$20,448,000 (100%)	$35,217,000 (100%)	$55,294,000 (100%)
Incumbents	$13,241,000 (65%)	$19,999,000 (57%)	$33,786,000 (61%)
Challengers	4,212,000 (21%)	7,764,000 (22%)	14,335,000 (26%)
Open Seats	3,115,000 (15%)	7,453,000 (21%)	7,172,000 (13%)
Republicans	$ 6,939,000 (34%)	$15,368,000 (44%)	$26,154,000 (47%)
Democrats	13,629,000 (66%)	19,849,000 (56%)	29,049,000 (53%)

- PACs Unfairly Attacked -

Regardless of the controversy and misunderstandings that have surrounded PAC growth, many experts are coming to view PACs as a very legitimate, worthwhile and needed participant in the political process. The increase in the number of PACs has encouraged many people, who otherwise would remain inactive, to participate in politics. PACs can be viewed as representing the views and interests of its individual contributors, thus allowing the collective voice of many like-minded citizens to be heard. The single voice often was overlooked until PACs started growing.

Despite these facts, however, groups like Common Cause love to publish reports alleging that business PACs greatly influence legislation, like: killing hospital cost containment legislation, blocking new enforcement powers for the Department of Housing and Urban Development, and spurring the development of the cargo preference bill. It is almost coming to the point where PACs are being blamed or praised for every single Congressional vote that is taken on a major issue.

For Example, Common Cause issued one such report in April, 1981 titled: "Who's Writing Our Tax Laws?"[22] The article was full of statistics and neat little charts showing how much business PAC money went to members on the Senate Finance Committee and the House Ways and Means Committee. The clear purpose of the story was to leave the impression that greedy businessmen (not average, everyday citizens) through their business PACs are writing our tax laws.

As with many studies conducted on PACs, the article is full of false assumptions and missing facts. The study provides no direct statistical evidence proving that candidates receiving PAC money: 1) win, and 2) end up on the Ways and Means Committee ... nor does the study examine the degree and type of communication each of the PACs gave the Congressmen on how to vote on a particular issue, and why the Congressman actually voted the way he did. There are many more variables and explanations Common Cause needs to consider if it wants to present an intelligent and objective case. The article does not show the type and amount of PAC money challengers received who never made it to Congress, nor does it show the type and amount of PAC money that went to other Members on other committees.

One example from the report will show the type of fallacy groups like Common Cause often fall for time and time again. Close analysis of one Republican Member they cited as having received a large percentage of business PAC money revealed that over 200 PACs contributed to his campaign averaging only $400 per PAC. It is incredible to conclude that one PAC at $400 a clip can have that much influence on a particular legislator. In fact, these 200 PACs represent a substantial segment of the American voting public and have a right to be heard.

Did Common Cause survey these 200 organizations to see where they stood on a particular issue to be used as a case study? Did Common Cause check to see whether the 200 PACs individually communicated with the Congressman on how to vote, whether the 200 PACs were in agreement on how the Congressman should vote, and whether money was increased, decreased, or switched to a different person in the next election? It is only this kind of survey which would begin to provide the link between PAC contributions and specific votes.

... or take the Common Cause study which traces contributions made by the American Medical Association's political action committee to certain Congressmen, and how those Congressmen voted on the Hospital Cost Containment bill (which the AMA opposed). Published in December of 1979, this study concluded that House members who voted to kill the Hospital Cost Containment bill received nearly four times the amount of campaign contributions from AMPAC as did supporters of the bill. The study notes that 202 of the 234 House members who voted for the AMA-backed substitute to the Cost Containment bill received a total of $1,647,897 in AMA contributions, for the 1976 & 1978 elections, an average of $8,157 per congressman. The study goes on to show that of the fifty leading House recipients of AMPAC contributions, forty-eight voted in support of the AMA position. Common Cause has described the same pattern in other cases of congressional legislation.

Empirically interesting as the data may be, the Common Cause study fails to draw a causal link between contributions and congressional votes. Hence, the study does not in fact demonstrate that a Congressman will automatically vote a certain way because he has received money from a certain interest. The problem here is similar to the proverbial question: which came first, the chicken or the egg? That is, does a Congressman vote a certain way because of heavy backing from particular special interest? Or, because a Congressman votes a certain way on the issues (for example against federally-financed health care) does he receive backing from certain special interests, like the AMA? Elements of both undoubtedly exist, though to what extent is impossible to determine. And, because congressional campaigns are only two years apart the "cumulative effect" of contributions may make for a distinction without a difference on these two questions.

The Common Cause study does point out that some special interests spread their money out over a wide spectrum of political opinion to encompass those who as a matter of political philosophy would probably not support that interest. For example, the AMA contributes to some Congressmen who are in favor of more government regulation of health care services, something the AMA opposes. It is in this area of contributing to congressmen who oppose the particular interest -- that some attempt to influence (votes/legislation) may be conceived. Some special interests prefer to simply "touch base" with Congressmen of opposing points of view simply because they are incumbents and likely winners, and they want to "keep the lines of communication open" in hopes of a possible shift of position.

The Common Cause data indicates that some Congressmen who received as much as $13,000 from the AMA *still voted against* the AMA position. Others who did not receive *any* AMA money voted *for* the AMA position. The simplest conclusion to be drawn is that there are many factors that determine how and why a Congressman will vote on a certain issue. Campaign contributions, or anticipation of them, may be one of these factors -- but it has never been convincingly shown to be the major one. It might also be suggested that undue influence might accrue to that special interest which, as a percentage, contributes the most to a candidate -- regardless of the actual dollar amount. If this last point has any validity, it should point out that limits on the *amounts* of contributions do not fully address the problem of the undue influence of big money in politics. One must also consider the percentage of the contribution to the total amount given to a candidate. One way to reduce the possibility that any one person, group, or interest may dominate in terms of percentage giving, is to allow for a more competitive system of giving from several different sources. Obviously, contribution limitations limit competition and should be removed.

Nevertheless, repeated cries have been heard in Congress to impose further limits on PAC contributions, and to replace this source of funding with public financing of congressional elections. The Obey-Railsback PAC limitation bill passed the House in 1979 but died in the Senate.

This proposal attacks a symptom of the disease, not the disease itself -- which is low contribution limits. The main reason special interest PACs have grown in influence is because other sources of funding available to candidates have been systematically taken away through individual and party contribution limits. To rectify this problem, one must get at the root cause, the low contribution limits.

Further restrictions on PACs would only cause additional emphasis to be placed on independent expenditures, give wealthy candidates increased advantages, and further threaten the right of free association and speech as people tried to combine their resources to be more effective in the political process.[23]

Public financing of congressional elections would not solve the problem either. In fact, that concept would further entrench the incumbent by forcing the challenger to accept spending limits. Combine this with all the other advantages incumbents enjoy, and one can easily see that challengers would seldom have a chance of getting off the ground.

Whatever the cause for concern with regard to PAC money, it is obvious that more regulations and greater limitations will only dry up yet another source of legitimate revenue for campaigns. The solution to the problems created by contribution limitations is not more restrictions.

6. Labor Unions Favored

Another problem created by the FECA is the favored status given to labor unions. Two major flaws exist in the current law: 1) the use of compulsory union dues for political purposes, and 2) the ability to engage in campaign activity, under the guise of "non-partisan" voter education that is financed from union dues, much of which does not have to be reported.

Unions are prohibited from making direct cash contributions to candidates, as are corporations. However, every year, millions of American workers are forced to support candidates and causes which they individually oppose because union officials are specifically allowed by law to use union dues for indirect "non-partisan" voter education political activity. The law says there is no limit on what can be spent on voter education political expenditures. Organized labor has used this exception to funnel millions of dollars of political services on behalf of specific candidates.

What constitutes a "non-partisan" voter education political activity? It includes any activity directed at "members" and their families, such as mailing material supporting or opposing political candidates, the operation of phone banks, conducting voter registration and get-out-the-vote drives, establishing and operating a PAC, soliciting contributions for the PAC, and precinct work. All of these activities are very partisan in nature using staff time of thousands of union employees devoted almost exclusively to campaign activity -- all while the individuals continue to draw union salaries paid for by compulsory union dues.

Since much of this activity does not have to be reported, it is difficult to estimate its dollar value. The Public Service Research Council estimates that in 1976, organized labor "donated" $100 million in campaign services to specific candidates.[24] No doubt the 1978 and 1980 estimates would be even higher ... but even if one uses the $100 million figure, that is four times the amount that all PACs contributed in the 1980 election.

The National Education Association (NEA) provides a clear example of this abuse. There is no question that the officials of the NEA used their union and union funds to support Jimmy Carter in 1976 and 1980 in return for the establishement of the Department of Education. The NEA supported 462 delegates and alternates to the Democratic National Convention in 1980 and spent an estimated $3 million on behalf of Carter's reelection campaign. It did this despite the fact that at least 40% of the members of the NEA are Republicans.

There is no problem with protecting the right of union officials to communicate with their members on behalf of a candidate so long as they do it on their own time and with voluntary PAC money instead of using union treasury money. The problem comes when compulsory union dues are used to engage in partisan politics. This forces millions of workers to support (often against their will and convictions) the campaigns of political candidates chosen by union officials. The law should be changed to state that the only source of money used for political purposes must be voluntary in nature. If labor members want to band together for political purposes, more power to them -- but let it be voluntary and not by forcing people of the opposite political persuasion to subsidize such an effort.

Even so-called "non-partisan" voter registration or get-out-the-vote drives are used by organized labor for partisan purposes when they are aimed at specific minority groups and sections of the city known to vote the way the union officials want. Even these activities should be supported with voluntary PAC money instead of compulsory union dues.

As Congressman Dickinson has stated, "we must not permit any man or any organization to force any person to make political contributions against his beliefs or convictions."[25]

7. Lengthens Campaigns and Increases Costs

The current election law places a further burden on campaigning by increasing the length of the election cycle and simultaneously raising its costs. It does this in two ways: 1) contribution limits have forced candidates to start earlier to seek out the small contributor (and in the case of Presidential campaigns, candidates must meet a prescribed formula of receiving contributions from across the nation to be eligible for matching funds), and 2) compliance costs (complying with the FEC's reporting requirements) have added an additional work load on the campaign which often goes well beyond the actual election day.

To attract the small contributor requires the expanded use of direct-mail operations. Direct-mail can be an extremely expensive way to raise funds. For example, Senator Jesse Helms raised around $6 million through direct-mail operations in his 1978 re-election bid. However, it cost him nearly $4 million to do it; so he netted only $2 million. Senator Jake Garn reported that it cost his campaign $100,00 to comply with the FEC's reporting requirements.[26]

8. Lawyers and Accountants Act

The FECA has been described by many as the "Lawyers and Accountants Act of 1974" because the FEC reporting requirements and regulatory hassle have required a new technical specialization in order to campaign. John Sears, former campaign manager for Ronald Reagan, is fond of saying: "In the old days, the first person you would hire was a good speech writer. Now the first guy you hire is a good lawyer, the second is a good accoutant." Precise budgets, detailed reports, carefully controlled expenditures, and countless man-hours of activity (not directly related to educating the public on the candidate) have now replaced the spontaneity and freedom associated with political activity of the past.

FEC recordkeeping and reporting requirements are so complex and detailed that the Commission sends each candidate who registers with the FEC a copy of the following: (a) FEC regulations, (b) the Federal Election Campaign Act and all other laws relevant to elections, (c) a manual on proper bookkeeping and reporting procedures, and (d) a "free" subscription to the FEC's Record (which is a monthly newsletter updating the candidate on the latest court rulings, news of interest, and changes in the regulations). How many candidates have the time to familiarize themselves with hundreds of pages of rules, regulations, and procedures? The need for an army of lawyers and accountants to satisfy political bureaucrats has had a real "chilling" effect on volunteer participation in politics.

9. Political Sabotage and Damaging Press Stories

One of the big problems surrounding the Act is the atmosphere of distrust and suspicion the FEC creates with its regulations and investigatory powers. Anyone can trigger an investigation of a campaign or committee by simply filing a complaint with the FEC. This presents a growing threat to our political system because an ever-growing list of candidates and groups are using the FEC to discredit their opposition.

Complaints filed with the FEC must be sent to the person involved regardless of the merits of the case. The law requires that a copy of the complaint be sent with the notice from the FEC that a complaint has been filed -- but, due to bureaucratic bumbling, it does not always happen. The respondent has 15 days to answer the Commission and state why no further action should be taken. After that period, the Commission can close the case, sit on it, or investigate further ... all the while, the person being investigated waits in the dark as to what the FEC is doing, not knowing how much information the FEC has is inaccurate, and how much is political sabotage by the opposition.

Depending on the nature of the case and the arbitrary nature of the investigator, a flood of subpoenas, depositions, interrogatories, demands for documents and additional supporting material can be made of the defendant. This potential for legal action only further discourages citizen involvement and volunteer activity -- all the while eating up precious time and resources of the campaign.

If the press gets hold of the investigation, due to a "convenient" leak, then the defendant is in real trouble. Whether he is innocent or not, the headline alone ("Candidate so-and-so Under Investigation by FEC!") will hurt him. A well qualified and upstanding citizen now feels like he is on the FBI's 10-Most Wanted List. The full weight of the federal government with its seemingly unlimited budget and all of its lawyers, auditors, paralegals, and investigators can be used against him. How can an individual fight the federal government and still have the time and money to run for office.

As a result, the person involved will often enter into a conciliation agreement with the FEC (in which the FEC routinely demands an admission of guilt) in order to avoid a lengthy court battle to prove his innocence. It is very difficult to wage a court battle (with all of the negative press connotations) and a political campaign at the same time.

The law is so complex and contradictory, that almost any candidate or political committee can be found to be in violation of some provision of the law or regulations at any time. This opens a host of opportunities for the opposition to exploit the FEC and then sit back and watch the bureaucratic arm of the federal government (and the press) do a real number on the person or organization targeted for attack. A campaign that was supposed to be waged on the issues may be shifted to the compliance arena where some nitpicky interpretation of some obscure regulation written by an obscure bureaucrat may irrevocably damage the campaign. Chances are that no one really knows what the regulation means anyway and the public, by and large, could care less if they knew what all the fuss was about. But the headline in the morning paper reads: "Candidate "X" Investigated by Government Agency," and that is all that matters.

Senator Jepsen/Dick Clark Campaign

The 1978 Roger Jepsen/Dick Clark Senate race in Iowa provides a good example of this problem.[27] During the campaign, Jepsen went to his family bank to borrow $50,000 to use as "seed money" to start his campaign. The bank required the spouse to sign also -- so Mrs. Jepsen's name appeared on the loan since the house used for collateral for the loan was jointly owned by Mr. and Mrs. Jepsen. Since the property was in both names, the bank required both signatures for the loan. This is a common practice.

A complaint (probably filed by someone close to the Clark campaign) was filed with the FEC charging that technically half the loan came from Jepsen's wife. As a result, she was in violation of federal law for contributing over the $1000 limit. Two other matters were also investigated by the FEC: 1) a wild charge that Jepsen had received $250,000 from the government of South Africa, and 2) the manner in which Jepsen was paying for political fund-raising services provided by Richard Viguerie.

Under the law, all of these matters were to have remained confidential but the Des Moines Register picked up the story and reported that Jepsen was being investigated by a federal agency for violating the election law. Needless to say, this did not help his campaign and it placed an unnecessary and unfair burden on his wife and family.

Despite these hinderances, Jepsen won the Senate race. The FEC eventually ended its investigation concluding that: (a) his wife's signature was more than proper and did not in any way violate the law, (b) the South African gift allegation was totally false and the case was dismissed out of hand, and (c) Jepsen was paying the Viguerie bills in a routine and timely fashion. However, when the Senator then demanded the FEC write a letter saying he had been cleared of all these erroneous charges, the Commission said it did not do such things and that like all other 1978 races, his race was still under review.

10. Threatens the First Amendment

Finally, we reach the most important problem created by the FECA amendments of 1974. The free speech guarantees of the Constitution are a fragile gift and must be carefully guarded. However, the FEC has proven time and time again that when faced with a choice between more freedom of speech or less, it consistently chooses less. In fact, in many cases it has acted as if the First Amendment did not even exist -- despite numerous court rulings saying that the Commission is off base with many of its rulings and investigations.

Congress immediately created an inherent conflict with the First Amendment of serious proportions by setting up an independent Federal Election Commission, because the FEC is expected to regulate free speech (election activity) and regulate it with great energy. From the outset the FEC and the First Amendment guarantees of free speech and press were pitted against each other in mortal conflict. Because of the FEC's irresponsible actions, one of them has to give -- let us hope it is the FEC and not the Constitution.

There is no way to have an informed electorate unless an individual's freedom to express his ideas is protected. Regulation of that freedom threatens the very foundation upon which this country has been built. One can only wonder what our forefathers would have thought of a federal agency empowered to investigate the internal workings of peaceful political organizations and regulate what an individual can and cannot freely give out of his own pocket to another individual. Sen. Eugene McCarthy put it well when he said:

> The American Revolution wasn't financed with matching funds ... George III didn't say, "You fellows raise a hundred thousand and we will match it, and you can have a minor revolution." The Revolution wasn't financed by popular subscription. There were some big contributors. If George Washington were around today, he would be accused of buying the commander-in-chief's office.... If someone had come into the Constitutional Convention and said, "We want a system whereby the government will finance politics," he would have been told that this was what the Revolution was against. The control of the people of this country before the Revolution was financed by the government of England, and we now have come back to that.[28]

A democratic form of government, like ours, must have freedom of political activity -- or our government and our people will no longer be free.

EXAMPLES OF EXCESSIVE FEC REGULATIONS AND ACTIONS

The list of FEC abuses is so long that it is hard to limit the analysis to a representative sample. Here are a few which reveal how irresponsible the FEC has been.

-- Reader's Digest

The FEC charged that "there was reason to believe" that the Reader's Digest Association made an illegal corporate campaign contribution against Sen. Ted Kennedy in 1980 by sending television stations videotapes announcing the outline of its study of the Chappaquiddick accident. The Digest had to go to court to block the FEC's investigation.

Congress clearly exempted news stories and editorials from the FECA since most press organizations are also corporations and routinely publish stories and opinions expressing the point of view of the owners and staff. Congress did not want the FEC regulating the press ... yet that is exactly what the Commission is attempting to do.

The danger comes when one realizes that many small papers across the country (which do not have the resources of Reader's Digest to defend themselves against the FEC) may decide to limit their editorial comment for fear of being in violation of the law. If that happens, we are in real trouble as a free nation.

-- Pink Sheet

The FEC has shown further disregard for the Constitution in its investigation of the Phillips Publishing Co. which publishes a conservative, anti-communist newsletter called The Pink Sheet on the Left. The FEC charged the company with five violations of the law -- among them that the company should be registered with the FEC as a political committee and file reports with the FEC since it sent out promotional material to potential subscribers which contained an editorial comment critical of Sen. Kennedy's bid for the presidency in 1980.

The paper refused to honor the FEC's subpoenas for information on its editors, personnel, mailings, and bank account numbers ... and on July 17, 1981, the courts ruled that the FEC must end its investigation of the company. The FEC was appealing the ruling, but then withdrew its appeal in October. Unfortunately, the FEC still does not appear to be able to understand the importance of a free press or the First Amendment.

-- Central Long Island Tax Reform Immediately Committee (TRIM)

In 1976, the FEC attempted to stop a group of citizens from circulating a pamphlet outlining their Congressman's voting record on several issues. Five members of a local TRIM organization in New York raised $135 to pay for the printing of the leaflet. It did not mention the Congressman's party affiliation or his candidacy for elective office -- nor did it even imply that the Congressman should be voted in or out of office. It simply urged the people to contact the Congressman to let him know where *they* stood on the issues.

Nevertheless, the FEC ruled it had "reason to believe" TRIM was in violation of the law even though this is a common practice among many non-political, educational organizations. For example, numerous church groups like the United Church of Christ, business groups like the Chamber of Commerce, and citizen groups like Public Citizen all publish and distribute information on congressional voting.

With the help of the American Civil Liberties Union, the individual being attacked by the FEC went to court and won a dismissal of the FEC's suit. If the defendant had not been able to secure counsel, he might very well have been forced to admit to a violation of the law that he never violated.

There is no excuse for such a heavy-handed treatment of an innocent citizen simply exercising his political freedoms protected by the Constitution. Even the court opinion stated the concern regarding the "insensitivity to the First Amendment values displayed by the Federal Election Commission in proceeding against these defendants." ... and all for a $135 pamphlet.

National Right to Work Committee (NRTWC) and the NEA and the AFL-CIO

The FEC has revealed an incredible bias in favor of labor organizations. Here are a few examples:

-- NEA

In 1976, the NRTWC filed a complaint with the FEC to take action to halt the National Education Association from using a "reverse (negative) check-off" to raise campaign funds from its members for its PAC. The NEA was automatically deducting "contributions" from members' paychecks without the individual members' permission, and then distributing the money to congressional candidates. When the FEC refused to act, NRTWC went to court in 1977. The court ruled that the $821,000 the NEA raised from 1974 through 1977 was raised illegally and must be refunded. However, the FEC did not seek any penalty from the NEA and did not make the congressional candidates receiving NEA PAC money return the funds.

-- AFL-CIO

In 1978, the NRTWC filed a complaint with the FEC that the AFL-CIO was illegally channeling $312,000 in compulsory union dues from its general treasury "educational fund" into political campaign funds operated by its PAC (the Committee on Political Education). Once again the FEC refused to act and the NRTWC went to court to force the FEC to enforce the law. When the Commission finally did act, it fined the labor organization a mere $10,000 which netted the AFL-CIO $302,000.

-- NRTWC PAC

The NRTWC and the FEC have also been embroiled in a court fight over the right-to-work group's PAC. At issue is whether NRTWC may solicit political contributions from its members. Also at issue is the NRTWC's refusal to disclose its membership roster. Turning over the entire membership list would violate the NRTWC's First Amendment rights, and expose the right-to-work committee members to union threats and harassment. After six long years of litigation, the courts ruled in favor of the NRTWC and re-affirmed the NRTWC's right to set up a legitimate PAC.

A review of the details of this case will show how arbitrary and unfair the FEC has been in its actions.

In 1975, the NRTWC set up its PAC in conformance with its understanding of the newly-enacted campaign laws, and in early 1976 sent the FEC an advisory opinion request asking if its proposed activities -- which were outlined -- were in accordance with the FEC regulations. The FEC acknowledged receiving NRTWC's letter, and promised a response would be forthcoming. Nine months passed before the FEC attempted to respond. In the meantime, the NRTWC's PAC began to operate and solicit funds. The office of the FEC General Counsel submitted a favorable first draft of the advisory opinion, but after reviewing it, the Chairman (a 20-year Associate General Counsel to the AFL-CIO) Thomas Harris, pulled the opinion from the Commission's agenda. That draft opinion was never given a hearing before the full FEC. Chairman Harris expressed some concern that the PAC didn't have any "members." In less than a month, the National Committee for an Effective Congress (a liberal, independent PAC) filed a complaint with the FEC charging that the NRTWC PAC had no genuine members and therefore was conducting illegal solicitations. It may be of interest to note that the Executive Assistant to Chairman Harris, at that time, was a Ms. Susan King, who had been employed by NCEC as its executive director. A report recommending that the FEC Commissioners take action against the Right-to-Work PAC was completed only 14 hours after the complaint against them was received. (It took a court order to force the FEC to investigate the NRTWC complaint against the NEA, and that after months of inaction by the FEC.)

The Commission notified NRTWC that an investigation would soon begin and demanded to see the PAC's membership list. The Committee responded, but withheld the membership list to protect those whose names appeared from possible hostile actions by union officials. The FEC requested that the PAC withdraw its advisory opinion request, and the PAC refused. Within weeks, the Commission ruled that the PAC was guilty of soliciting "non-members." The Commission ruled that the group must: 1) admit guilt, 2) pay a $5,000 fine, 3) amend its articles of incorporation to provide for membership, and 4) "take all other steps necessary and proper to become a 'membership' organization." However, the Commission failed to define what a "member" really was, and it did not advise Committee attorneys what "other steps" were needed to actually become a "membership organization."

Verbal sparring by both sides for several months gave way to two suits: the NRTWC sued the FEC for violation of First Amendment rights of free speech and association, and violation of due process. The FEC, in return, filed suit against the Committee charging violation of election law. The two cases were combined for hearing in the U.S. District Court for the District of Columbia. The litigation stretched out for almost four years. In the interim, the FEC "completed" its advisory opinion response ... 26 months after the NRTWC had requested it! (Remember, the Commission only took 14 hours to respond to the National Committee for an Effective Congress complaint against the NRTWC PAC.) Yet, the response still was not complete. The document once again failed to define "members" or indicate what "steps" the Committee must take to become a "membership organization." With that lack of direction, the NRTWC would always be open to violating the law regardless of how hard it tried to follow the FEC's interpretation of the law. It would not really matter what the NRTWC did, the FEC could get it coming and going.

The district court judge ruled that the NRTWC PAC violated the election law and ordered over $100,000 in fines and penalties. On appeal, the U.S. Court of Appeals for the D.C. Circuit decided unanimously in favor of the National Right to Work Committee. After nearly six years, the First Amendment rights of the Committee's members were finally and completely vindicated -- at an incredible expense to the taxpayers and the NRTWC. For example, the NRTWC spent an estimated $260,000 to defend itself in this case.

-- Gun Owners of America

The FEC's inconsistency regarding fines as well as its actual rulings is clearly revealed in its action against the Gun Owners of America. GOA thought it had clearance to proceed with a financial arrangement of distributing the overhead (office space) and administrative expenses of two of its affiliated committees. This sharing arrangement had been approved verbally by several FEC staff personnel after GOA decided to check it out with the FEC. To its surprise, however, the FEC later on accused the GOA of violating the law and slapped it with a record-breaking $11,000 fine.

Even though the GOA was clearly trying to comply with the law, it was treated as a criminal organization. As with many groups, rather than fight the ruling in court, the GAO agreed to sign the conciliation agreement and pay the fine. It was simply not worth the negative publicity and the enormous litigation costs to pursue the case. This case presents a problem for political action groups and committees. They are almost afraid to go to the FEC with any "what if" questions for fear of initiating an investigation.

-- Macadamia Nuts (Congressman Heftel)

This is one of the most celebrated incidents illustrating that there is virtually nothing beyond the reach of the FEC. This case concerns whether a congressman could legally send macadamia nuts to his colleagues without breaking the election law. In 1978, the FEC issued a two-page "advisory opinion" saying it was okay. There is no reason under the sun for the federal government to be involved in such trivia. The very fact that Rep. Heftel felt he had to clear the matter with the FEC shows how ridiculously far the law can be stretched in its claim of jurisdiction.

FOUR RELATED ISSUES CREATED BY CAMPAIGN REFORM

1. Cost of Campaigns

The cost of campaigning for public office today has risen dramatically in the past 15 years. This was one of the key issues behind the FECA Amendments of 1974. However, there are legitimate reasons for the higher costs that election law reform cannot control. In fact, an excellent argument can be made that the campaign limits have forced most campaigns to suffer from a lack of funds in a time when the operation of campaigns needs to be more sophisticated and technically efficient.

Following are a few of the reasons why candidates need more money to campaign:

- inflation (an increase of 24% during the 1979-80 election cycle alone);
- increased use of computerized systems for "direct mail" fund raising drives, categorization of voters, etc.;
- larger elctorate (the number of voters that must be reached) and the larger number of candidates to compete against;
- growing need for political consultants and advisors to better manage and target campaign funds;
- increased use of polls and public opinion surveys;
- FEC compliance costs requiring the need to hire more lawyers and accountants;
- growing use of the media (radio, television, and newspaper ads) to reach prospective voters;
- revitalization of the Republican Party in many parts of the nation (especially in the south), making it necessary for both Republicans and Democrats to campaign more vigorously;

- -- increase in split-ticket voting requiring more energetic campaign efforts; and
- -- increase in the number and length of primaries.

When compared with the advertising budgets of private industry, the amount spent by campaigns comprises only a small percentage of total outlay. For example, "the $540 million spent for campaigns in 1976 was less than the total of the advertising budgets for that year of the two largest corporate advertisers, Proctor & Gamble and General Motors. It was a fraction of one percent of the amounts spent by federal, state, county, and municipal governments -- and that is what politics is all about, gaining control of governments to decide policies, on among other things, how tax money will be spent."[29]

According to the Federal Election Commission, the costs for campaigning for Congress in 1979-80 were 23% higher than in 1977-78.[30] This does not even keep up with inflation, much less meet all the other items forcing higher campaign costs. Some items, like media time, newspaper advertising, and polling have risen much faster than the inflation rate. According to the Harvard report:

> Every study based on the information available since 1972 has shown that most campaigns have too little, not too much money. The most competitive elections, where the voters have the most information about candidates, are those in which the most money is spent. Election contests in which spending is comparatively high are also those in which voter participation tends to be the highest.[31]

When it comes to the cost of campaigns, the current election law is part of the problem, rather than part of the solution.

2. Big Money

For some time, many people have expressed the concern that "big money" is controlling Washington. Are election reform efforts to limit the amount of campaign money good or bad? Will the person who outspends his opponent normally win? When looking at the record, it appears that money is not necessarily the essential winning ingredient because the candidate who spends the most money often loses.

The 1980 Presidential race provides a classic example of this fact. John Connally far surpassed his Republican opponents in raising money early in the primary battle. By the end of 1979, he had raised more than $9 million -- around $3.5 million more than his closest competitor. He ended up spending $12.5 million, but he came up with only one delegate pledged to him at the convention. We have all heard of the "$6 million man" ... this delegate was the "$12 million delegate."

In only 16 of the 31 Senate races in 1976 did the winning candidate outspend the loser. That year, six senatorial candidates spent over $1 million in their election effort; John Heinz, PA; John Tunney, CA; James Buckley, NY; Robert Taft, OH; Bill Brock, TN; and Lloyd Bentsen, TX. Only two, Bentsen and Heinz were winners. Also in 1976, the two candidates who on a cost-per-vote basis ran the most expensive senate races; Richard Lorber, D-RI, and Stanley Burger, R-MT, both lost badly in vying for open seats.

In analyzing the 27 House races in 1980 where the challenger defeated the incumbent with no more than 55% of the total vote, the pattern shows that in a general sense, the challenger needed to outspend the incumbent on order to win. The average expenditure for these 54 House candidates was $301,000 per person. The average spent by the incumbent was $254,000, while the average spent by the successful challenger was 31% more, or $334,000.

However, there are numerous exceptions to this rule. For example,

- -- Chris Smith (R-NJ) defeated Frank Thompson (D-Incumbent) even though Thompson outspent Smith by 59% ($46,000).
- -- Tom Lantos (D-CA) defeated Bill Royer (R-Incumbent) even though Royer outspent Lantos by 61% ($296,000).
- -- Bobbi Fiedler (R-CA) defeated Jim Corman (D-Incumbent) even though Corman outspent Fiedler by 53% ($308,000).
- -- Guy Molinari (R-NY) defeated John Murphy (D-Incumbent) even though Murphy outspent Molinari by 90% ($134,000).
- -- Jim Hansen (R-UT) defeated Gunn McKay (D-Incumbent) even though McKay outspent Hansen by 21% ($47,000).
- -- Mick Staton (R-WV) defeated John Hutchison (D-Incumbent) even though Hutchison outspent Staton by 14% ($21,000)

... so it is obvious that there are other factors at play than just money.

But the general rule still applies -- challengers need to spend more to unseat incumbents, and while in this analysis these particular challengers did spend an average of 31% more, this 31% diminishes in proportion when one considers the advantages of incumbency. Obviously, this study would be more complete if one examined the number of incumbents who remained in office despite being outspent by challengers. As the following statistics show, incumbents running for reelection are generally reelected.

Percent of House Incumbents Reelected

1968	98.8%
1970	96.9%
1972	96.6%
1974	89.6%
1976	96.6%
1978	95.0%
1980	92.1%

In any case, whether more money helps or hinders the election process is not really the fundamental issue to be debated. In a free society we should let the people decide what a campaign is worth ... not non-elected, and non-accountable bureaucrats. It is not proper for the government to limit how much a person can raise or spend on his campaign. There is nothing inherently wrong with money. As we have already examined, because of the power of incumbency, limits on contributions reduce competition rather than increase it.

3. Independent Expenditures

Another consequence of the 1974 and 1976 campaign finance laws limiting contributions has been the rise of independent expenditures. An indvidual, group, or political committee (except party) is free to spend as much of their money as they choose in support of a particular candidate or cause, so long as those expenditures are not coordinated with the candidate's campaign. To date, those who were once wealthy contributors are not partaking of this practice in order to render heavy support to political candidates.

The Supreme Court in 1976 ruled that independent expenditures cannot be limited under the First Amendment in the Buckley v. Valeo case. After the ruling, the practice began to expand greatly although it has not yet come to dominate the political process. Independent expenditures only comprise a tiny percent of the total amount of money spent on campaigns.

Whether or not independent expenditures by individuals, groups, or political committees are having harmful effects on the political process is not really open to debate. There is nothing inherently wrong with the nature of independent expenditures. Such expenditures are protected by the First Amendment. It is consistent under the American political system that citizens be allowed to spend as much money as they desire to promote their political beliefs.

Some legitimate questions can be raised with regard to this type of political expenditure. Yet, as long as individuals, groups, and parties are limited in the amount they may directly contribute to the committee of a candidate, it is likely that the amount of independent expenditures will continue to grow as a percentage of total campaign expenditures. This may lead to a number of unintended consequences: 1) Spending in political campaigns may increasingly move beyond the control of the individual candidate and his organization to the control of outside indivduals and groups. 2) As a candidate loses control over much of the money affecting his campaign, he also loses control over the informational aspects of his campaign. Independent expenditures can distort a candidate's campaign by introducing issues the candidate would prefer not to have taken a position on -- a controversial subject like abortion or busing, for example. 3) If independent expenditures take a significant hold, campaigns may develop into contests mainly centered on conflicting issues and ideologies rather than the position of a wide range of items and the individual qualifications of a particular candidate.

However, in a free society like ours, one cannot limit the practice of independent expenditures without undermining the entire foundation of our democratic system. The First Amendment is not a "loophole" as the FEC often seems to think. The way to prevent centralization of power into the hands of a few groups or individuals is to remove contribution and spending limits across-the-board to promote maximum competition and/or cooperation, as the citizenry sees fit.

4. Disclosure Rules

Disclosure rules operate on the premise that the American people have a right to know who is financing the campaigns of candidates for federal office. Under current campaign finance laws, the names and addresses of all contributors who give over $200 to a political campaign are to be publicly disclosed.

The argument is made that if a candidate is financing his or her campaign with personal funds, the public should know this. If, on the other hand, the candidate is being financed by questionable sources, this too should be made part of the public record. In this way, it is claimed, the public will be provided with the information needed to make informed, intelligent decisions on the choice of who they want to represent them in Washington.

Though disclosure rules are generally desirable provisions in election reform acts, legitimate objections have been raised which must be addressed. There is a cost/benefit balance that must be reached in disclosure requirements. Many of the values served by disclosure rules are obscured because of the low disclosure threshold, $200. One pragmatic objection to the $200 level is that because it is so low, too many insignificant names are being disclosed which are overloading the system. In the 1972 presidential campaigns, 81% of all McGovern supporters gave between $100 and $1,000. Sixty-nine percent of all Nixon contributors also gave within this bracket. Yet, contributors within these brackets provided only 14% of the total funds given to Nixon, and just 21% of the total funds given to McGovern. The volume of the disclosure of all these names who gave such an insignificant amount of money tends to obscure the value of the disclosure process. It is doubtful whether any individual's vote would be swayed by an awareness that a particular person, along with 81% of all givers, gave below $1,000 to a candidate. If the objective is to reduce the influence of "big money" in politics by forcing disclosure of big contributors, the $200 level has obviously over-extended the requirement. To argue that a contribution of $200 runs the risk of possible corruption is simply unreasonable.

If disclosure rules are indeed a permanent part of our politcal process, it would seem that the limit should be geared at the higher, more expensive level at which improper influence could possibly result, assuming such an amount could be determined. Everyone's threshold of honesty is different and bribes are a part of historical record due to the weakness of man. However, as long as man is human and fallible, that is one risk that will always be part of a free society. Some people yield to corrupting influences for next to nothing. Judas sold out for 30 pieces of silver. But to take disclosure down to the $200 level is self-defeating. There is no way to totally prevent corruption through law. The ballot box is still the best restraint.

A far more serious objection to the disclosure level is that the $200 threshold results in a "chilling" effect on contributors who do not wish to have their names published. It is argued that this level greatly undermines any right to privacy an individual might have regarding his political beliefs and activities. Low disclosure levels may subject some to professional harassment, and still others to possible physical abuse because of their contributions.

This point can be made with regard to minor party candidates. Sen. Eugene McCarthy who ran for President in 1976 as an independent said, "We found people who said they would like to contribute but could not go on the record. It is a strange thing to happen in what we call a free society."[32] Some contributors may desire to break party lines and support a candidate in another party. Yet, because this will be disclosed, the full force of party discipline may bear down on that person and support may be withheld.

Other ideologically oriented minor parties, that are not in the mainstream of American political thought, are also seriously affected by low disclosure limits. The weakening of minor parties through the disclosure process, some argue, unfairly fortifies the two-party system, and limits the free competition of ideas and policies which form the foundation of our political system operated under the First Amendment. Although a consensus seems to exist in favor of disclosure rules, they often create more problems than they solve.

"LIBERAL" INADEQUATE SOLUTIONS

Even th[illegible]s of the Federal Election Campaign Act acknowledge that the law has create[illegible]ous problems that must be corrected. As usual, however, most of their propos[illegible] solutions" only hit the symptoms of the disease, creating further problems later down the road.

In March 1981, for example, Common Cause issued a 77-page study titled, "Stalled from the Start: A Common Cause Study of the Federal Election Commission." The report analyzed ten "widely shared" complaints about the FEC and made 22 recommendations for strengthening the effectiveness of the Commission. The thrust of these reforms is to give the Commission more independence and make it more powerful.

The study claims that: "It is our strong view that the performance of the FEC will not improve unless its structure is changed to provide for strong management leadership." Among its recommendations are:

-- a four-year term for the chairman;

-- power to appoint a staff director to act as a kind of "CEO;"

-- removal of the Congressional veto over FEC regulations; and,

-- multi-year budgets for the Commission.

The Common Cause approach is the typical regulatory/bureaucratic solution of ... "if we only had more staff, more money, and better organization -- we could do a better job at regulating." The reason these (along with all the other cosmetic reforms) will not work is that the fundamental structural problem of trying to regulate "free speech" through a governmental agency will not work.

The plain and simple fact is that the FEC and much of the current election law is not needed. Like most bureaucracies, the FEC feeds on itself and is out of control like a loose cannon. The law has allowed it to shoot where it pleases hitting things at random. Administrative changes, tinkering with the threshold limits, and all other minor amendments will give the appearance of reform while the "loose cannon" is free to fire where it pleases, more often than not, firing upon the First Amendment of the Constitution.

RECOMMENDATIONS

A. Abolish the FEC

Because the FEC is fundamentally flawed and beyond reform, it should be abolished. All enforcement powers (both investigation and adjudication) should be transferred to the Justice Department (as was the case before 1975). At the very least, the Department of Justice should be more sensitive to First Amendment issues.

The receipt of campaign reports should be transferred to an office within the General Accounting Office.

B. Needed Changes (Amendments) in the Law

Abolishing the FEC in no way affects the actual election laws. It only touches the Commission. Other needed amendments to the law should include:

1. The removal of all spending and contribution limits across-the-board. Should this not be possible, then at least these changes should be made:

- Raise individual limits from $1,000 to $5,000.
- Individual contribution limits should be higher for Presidential and Senatorial contests than for House races.
- Political parties should face no limit in the amount of financial support they can render to one of their candidates either through party spending or direct contributions.
- Remove annual individual contribution ceiling (currently $25,000).
- Only contributions and expenditures over $1,000 in an election should be "fully disclosed."
- Increase PAC contribution limits to candidates from $5,000 per election to $15,000 per election.

2. Prohibit the use of compulsory union dues for any political purposes.

3. Eliminate the public funding of Presidential campaigns. (this would automatically eliminate state-by-state expenditure limits in Presidential campaigns.) Why should my tax money be used to finance a candidate I don't believe in?

4. Income tax credit for contribution to candidates for public office should be expanded.

5. Permit party committees to engage in business activities in order to pay administrative expenses (i.e., allow for the sale of computer time, for example).

6. Raise the threshold for non-party committee contribution reporting. Currently all contributions from PACs must be reported regardless of amount.

7. Raise candidate reporting threshold from $5,000 to $15,000.

8. Broaden definitions of "membership" in a membership organization, cooperative, or corporation without capital stock and remove the solicitation limits on PACs.

9. Place all political committees (candidate or not) under the same arrangement as party committees in regard to receiving unlimited contributions for administrative costs, rent, overhead, etc.

10. Earmark FEC appropriations so that the Data Systems Division and Public Records Division receive a "no less than..." specific amount. Currently the general counsel and staff director operations are expanding their functions at the expense of data collections.

C. Limitations on the Records Collection Agency

Whether the GAO or the FEC administers the disclosure functions of the Act, specific limitations should be placed on the records collections agency. For example, should Congress decide to keep the FEC as a records collection agency, the following changes should be made:

-- removal of assessment of civil penalties by the FEC;

-- removal of authority for the FEC to send out subpoenas or file suit to enforce subpoenas;

-- removal of authority for FEC to enter into conciliation agreements;

-- removal of authority to process or initiate complaints.

Simply giving the Justice Department sole authority to file law suits to enforce the Act does not go far enough. Unless these changes are made, 95% of the enforcement power would still be left with the FEC. For example, the FEC has to date investigated about 1,500 alleged violations. Actual court suits number only about 50. The real problem is FEC harassment before the suits. The FEC must be prevented from harassing people, issuing subpoenas at random, and from even filing suits to enforce the subpoenas apart from the Justice Department. Unless these changes are made, the current "chilling" effect would still exist under this proposal, and in some ways, it could be worse ... the FEC could pressure the targets of their investigations to supply the FEC with information, or else ..." it is going to be referred to Justice." That is a powerful threat to face.

CONCLUSION

The Federal Election Commission has chilled. not maximized, citizen participation in the electoral process. It has fostered bureaucratic harassment and censorship of our most cherished Constitutional right -- the right to freely express and assemble ourselves together for political purposes without being hindered by the heavy hand of government.

As Donald Lambro has stated: "A simple system of public disclosure of major contributions to a candidate's campaign is all that is needed to keep our political process open, honest, and free."[33]

Steven Chapman puts his finger correctly on the problem when he concludes:

> Given the information about where a candidate gets his money and how he spends it, the voter should be trusted to make an intelligent decision. Instead of trying to make an intelligent decision easier, Congress has tried to make it impossible for the voter to make a bad one, by trying to guarantee that all candidates will be beyond reproach, beholden to no one. That can't be done, and even if it could, the cost would be too high. The cost of the current failure is already too high.[34]

It is long overdue to abolish the FEC and simplify our election laws. However, the argument has recently been heard among some Republicans that no major changes should be made in the election laws because the 1980 election proved that the FECA has backfired and has hurt the Democrats more than Republicans.

Such an argument misses the point. Election laws should not be fashioned on how they help or hurt a particular political party ... or who gained or lost in the previous election.

All Americans (Republicans, Democrats, and Independents) suffer when our political freedoms are limited and curtailed in such an arbitrary and inequitable way under the current FEC. That is the fundamental issue at stake when discussing the need to abolish the Commission.

If freedom of speech and assembly is a good concept and practice to have (and America's 200-year history says it is), then it should be good for everyone, equally, across-the-board. The time to make the move for freedom is now ... before it is too late.

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ENDNOTES

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3. Herbert E. Alexander, Financing Politics: Money, Elections, and Political Reform, 2nd ed., Congressional Quarterly Press, 1980, pp. 15 & 16.
4. Eugene McCarthy, AEI Forum, 1977, p. 12.
5. John R. Bolton, "The Federal Election Commission: Government Astride the Political Process," Regulation, American Enterprise Institute, July/August, 1978, p. 50.
6. Maurice Stans, The Terrors of Justice, Evvert House, 1976, p. 408.
7. Gary Jacobson, An Analysis of the Impact of the FECA, 1972-78, Institute of Politics, Harvard University, prepared for the House Administration Committee, May 1979 (GPO print, October, 1979), p. 20.
8. Herbert Alexander, "Public Financing for Congressional Campaigns," Regulation, February, 1980, American Enterprise Institute, p. 30.
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10. Testimony of Michael A. Nemeroff, attorney, before the Task Force on Enforcement of the House Administration Committee, June 19, 1980. For further examples of the FEC's enforcement procedure problems, note the testimony given to the same task force by Paul Kamenar, Director of Litigation for the Washington Legal Foundation, Washington, D.C., June 19, 1980.
11. John Bolton, "Buckley v. Valeo: It's Aftermath and Prospects," Vanderbilt Law Review, November 16, 1976, Vol. 29, #6, p. 1357.
12. Harvard Study, GPO print, p. 35.
13. Alexander, Financing Politics, 1980, p. 22.
14. Source: FEC Press Release, July 17, 1981.
15. Harvard Study, GPO print, p. 4.
16. Source: FEC Press Release, August 10, 1981.
17. The full name of these organizations and what they raised (recorded at that time) in the 1980 election cycle: Realtors Political Action Committee ($2,632,120); American Medical Association PAC ($1,728,392); Gun Owners of America Campaign Committee ($1,282,048); United Auto Workers-V-CAP ($1,792,406); AFL-CIO Committee on Political Education Political Contributions Committee ($1,108,873); Automobile and Truck Dealers Election Action Committee ($1,223,955); Committee for the Survival of a Free Congress ($1,647,556) [conservative],; and National Committee for an Effective Congress ($1,408,788) [liberal]. Source: Joyce E. Thomann, "PACs in Perspective," IMPACT, published by the Public Affairs Council, March 1981.
18. Source: FEC Press Releases -- August 10, 1981 and June 29, 1979.
19. Stuart Rothenberg, Campaign Regulation and Public Policy: PACs Ideology and the FEC, The Free Congress Research and Education Foundation, 1981, p. 35.

20. Source: House Administration Committee Minority Staff Analysis of FEC Statistics, September 11, 1981.
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22. Ruth Simon, "Who's Writing our Tax Laws?" People and Taxes, April, 1981, pp. 4 & 5.
23. For further discussion on this point, see Stuart Rothenberg, Campaign Regulation and Public Policy, pp. 44-50.
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25. Congressman William Dickinson, Congressional Record, p. H 1386, February 27, 1980.
26. "Why Does Congress Hate the Election Commission?" U.P.I. story by Clay F. Richards and Gregory Gordon, Cedar Rapids paper, September 13, 1981, p. 11a.
27. Ibid.
28. McCarthy, AEI Forums, 1977, pp. 16 & 17.
29. Alexander, Financing Politics, 1980, p. 19.
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34. Stephen Chapman, "The Limits of Limits: The Failure of Election Reform," The New Republic, October 13, 1979, p. 17.

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Loren C. Bruce
(with the assistance of Anthony J. Coppolino)

November 23, 1981

U.S. SENATE,
Washington, D.C., November 24, 1981.

Hon. CHARLES McC. MATHIAS, Jr.,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, D.C.

DEAR MAC: Thinking about my testimony before the Rules Committee this morning, I want to correct any possible misunderstanding about my proposal that national and Congressional party committees be exempted from the annual aggregate individual contribution limits.

I was not proposing nor do I suggest that we change the current $20,000 limit on contributions to the national and Congressional committees. The effect of my proposal would be to create an annual contribution maximum of $85,000 for an individual: $25,000 aggregate to candidates and PAC's and $20,000 to each of the three party committees. Under current law, an individual can contribute a total of $25,000 to these committees annually. My proposal would increase the annual maximum to these committees to $60,000—only a 140 percent increase. I do not believe this limited increase would open us to the charge of permitting a few millonaires to control out national party structures.

On a related subject, you asked me about a proposal to increase or possibly even remove the ceiling on what national party committees are permitted to spend in behalf of federal candidates. I responded that I favored strenghtening the political parties, which have been weakened in recent years by a convergence of historical trends, but that I was not sure of the advisability of any substantial increase in limits in party spending in a candidate's behalf.

Further reflection has reinforced my reaction that any proposal to increase party spending limits needs to be studied carefully. In my state, for example, the party can currently contribute over one million dollars to a U.S. Senate candidate. That amount alone is enough for a California Senate candidate to reach the threshold of campaign credibility, which I believe is the reasonable standard for maximum allowable party spending. In other words, I believe a political party should be able to spend enough to assure that a candidate who receives minimal contributions from other sources can wage a credible campaign. Since in California that threshold of credibility is achieved under current limits, I see no reason for permitting an increase in California. I suspect the situation is similar in other states.

I'll be back in touch with you as I have further thoughts on this problem.

Best regards,

ALAN CRANSTON.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1982

The Honorable Jesse Helms
United States Senate
Washington, D. C. 20510

Dear Senator Helms:

This is in response to your letter requesting that the Federal Election Commission provide information to supplement testimony presented to the Committee on Rules and Administration on November 20, 1981. The answers to the questions you posed are set forth below.

1. In the FEC's written testimony presented to the Senate Rules Committee on November 20, 1981, it was stated that in 1980 "nearly 13,000 individuals came to the Commission to review over 3 million pages of campaign finance reports filed since 1975." That averages about 50 persons per day visiting the FEC's public records office. Upon what information did the FEC base this 13,000 figure?

The "nearly 13,000" figure was taken from page 56 of the Commission's 1980 Annual Report, a copy of which is included as Attachment A. It is based upon detailed accountings which the Public Disclosure Division prepares each month.

The Annual Report documents numerous other Commission efforts designed to provide information and assistance to candidates and committees and to ensure full disclosure of campaign finance information, such as the 62,000 telephone inquiries handled by the Commission's Public Communications and Press Offices. Unfortunately, due to budget constraints, the Commission has been unable to provide the full range of public outreach services desirable.

2. During your oral testimony, you suggested to Senator Ford that the Commission had stopped harassing political committees with Requests For Additional Information (RFAI's) for trivial information. How many RFAI's were issued by the FEC during the months of August and September, 1981? How many were issued during December, 1980, January and February, 1981? Could you send us copies of these RFAI's?

Listed below are the number of first notice RFAI's sent for the months indicated in your request.

	Number of RFAI's Mailed
December, 1980	277
January, 1981	216
February, 1981	344
August, 1981	228
September, 1981	355

Due to the large number of RFAI's involved (1,420) and the fact that copies are retained in the individual political committee files, not together, examples of several RFAI's from the indicated months are included as Attachment B to illustrate the kind of information lacking on reports and required by law. Computer lists of all of the RFAI's and their respective microfilm locations could be provided to facilitate review of the RFAI's on microfilm should further information be required.

3. How much did the FEC spend altogether at the administrative level and court level (staff salaries, attorneys' salaries, commissioners' salaries, travel, xerox, etc.) for each of the following enforcement cases which the FEC ultimately lost in court? Briefly describe how those costs were computed.

FEC v. Phillips Publishing, Inc.

FEC v. National Right to Work Committee

FEC v. Machinists Non-Partisan Political League

The Federal Election Commission, as a relatively small agency with an annual budget of less than $10 million, does not allocate administrative support costs such as reproduction expenses to individual programs. All Commission costs for these items are included in the Administration Division's general administrative support allocation.

With regard to the cost of staff time for the cases requested, the Commission's Management Information System (MIS) provides average costs per case (or unit of output) on an aggregate basis. Cost information is not kept on an individual case basis. The MIS breaks down cost reporting on enforcement actions in the following fashion:

a) All actions from initiation of the complaint, up to and including conciliation, are reported as an enforcement case or Matter Under Review (MUR).

b) All actions from initiation of litigation through conclusion of the litigation are reported as a litigation case or suit.

c) All subpoena enforcement litigation actions are reported as a separate litigation case or suit.

Therefore, one enforcement action which is carried through to litigation could appear in the Commission's MIS as three units of output--an enforcement case or MUR, an offensive litigation suit, and as subpoena enforcement, should it be required.

In answering this question, the Office of General Counsel (OGC) reviewed the individual time sheets from which the aggregate information is derived for the MIS, and calculated the costs for all stages of the three matters in question. The OGC costs include only the direct staff costs of personnel working on the specific cases, as well as travel costs. (Figures for staff time prior to 1978 are unavailable.) The Commission's work measurement system does not allocate the time of the General Counsel, Staff Director, or Commissioners to specific programs. (Their time is allocated to management of their specific staffs and, for the Commissioners, to the management of the Commission.)

The following is the most accurate approximation of the costs associated with these cases. Where reproduction costs are provided, they cover only those papers filed in court.

FEC v. Phillips Publishing, Inc.

568.5 staff hours Cost = $ 7,428.15

FEC v. National Right to Work Committee

FY 1978	1156	staff hours	Cost = $13,743.59
FY 1979	1351.75	staff hours	Cost = 14,705.40
FY 1980	826.5	staff hours	Cost = 11,170.01
FY 1981	773	staff hours	Cost = 11,559.23
FY 1982	137	staff hours	Cost = 2,410.98
			$53,589.21

FEC v. National Right to Work Committee (Continued)

Travel	$ 3,235.04
Cost of Depositions	4,641.60
Fees of Clerk	15.00
Fees of Marshal	255.28
Fees of Court Reporter	298.95
Fees for Witnesses	376.25
Fees for Copies of Papers	306.80
Docket Fees	60.00
Xerox Charges for Court Papers	211.50
	$ 9,400.42
TOTAL	$62,989.63

FEC v. Machinists Non-Partisan Political League

609.5 staff hours	Cost = $ 8,179.91
Petition for Certiorari	2,024.00
Transcripts of hearings	153.55
Funds to Pay Award of Court Costs	2,718.29
Xerox Charges for Court Papers	131.80
TOTAL	$13,207.55

4. With respect to the Phillips Publishing case, why did the FEC prosecute Phillips for his anti-Senator Kennedy comments in the promotional material for his newsletter The Pink Sheet on the Left, but dismissed out of hand a similar charge against Penthouse Magazine for promoting Penthouse that had anti-Jimmy Carter comment?

The complaint filed against Penthouse Magazine attached a copy of the advertisement in question as an exhibit. The Commission had sufficient information in its possession to determine that the exhibit was a normal advertisement designed to sell copies of the magazine and to conclude that no violation of the Act had occurred. The complaint filed against The Pink Sheet on the Left did not involve an advertisement, but rather a subscription solicitation. The Commission could not determine from the face of the complaint or attached exhibits whether this material was normal advertising practice or political advocacy. The complaint, as noted by the District Court, additionally included an allegation that The Pink Sheet on The Left was controlled by a political committee and that Phillips Publishing conveyed its message in unambiguous terms with words contained in 11 C.F.R. §109.1(b)(2), which defines "express advocacy" with respect to independent campaign expenditures.

5. Although the District Court ruled against the FEC in Phillips, the FEC appealed the decision but then recently withdrew its appeal noting that the FEC nevertheless disagreed with the District Court's opinion. Does this mean that the FEC intends to prosecute in the future cases like the Phillips case?

The Commission's initial decision to appeal the District Court ruling in Federal Election Commission v. Phillips Publishing, Inc. ("Phillips"), Misc. No. 81-0079 (D.D.C. July 16, 1981), was prompted by its concern that the decision set an erroneous standard for enforcement of the Commission's subpoenas.

The Commission believes that the District Court's ruling on the question of whether a court must pass on the issue of the Commission's substantive jurisdiction before enforcing its investigative subpoenas was incorrect. Further, the Commission believes that the Court mistakenly applied the recent decision of the United States Court of Appeals for the District of Columbia Circuit in Federal Election Commission v. Machinists Non-Partisan Political League, 655 F.2d 380 (D.C. Cir. 1981) ("MNPL"). The cases were distinguishable, the General Counsel noted, and the Phillips matter lacked at least two of the four requisite characteristics enumerated by the D.C. Circuit in MNPL.

The Commission's statement of disagreement with the District Court's ruling in Phillips, issued at the time of its withdrawal of the notice of appeal, was made for the same reasons that prompted the original decision to appeal. Those reasons were limited to the Commission's concern over the District Court's extension of MNPL to the Phillips matter, which was not compelled by MNPL and presented novel and far-reaching challenges to the Commission's enforcement jurisdiction.

For that reason, it would be incorrect to conclude that the Commission's statement of disagreement with the District Court in Phillips means that the Commission will pursue any matter further than is necessary to make determinations as to whether or not a violation has occurred. However, the Commission believes that it has a responsibility when a complaint is filed to determine whether there is reason to believe a violation has occurred and to investigate as necessary to reach a final resolution of the matter.

6. I understand that the FEC prepares weekly or monthly summaries of FEC attorneys' time and General Counsel staff time spent on various matters. Could you please provide copies of all of these summaries for the past 12 months?

The Office of General Counsel prepares monthly summaries of all staff time by budget category. These sheets do not indicate time spent on specific matters within a category. Copies of these summaries for the past 12 months are included as Attachment C.

7. The Federal Communications Commission, an independent agency like the FEC, has recommended to Congress less FCC regulation, by calling for the repeal of the "Fairness Doctrine" and "Equal Time Rules" which infringe on broadcaster's First Amendment rights. The FEC, on the other hand, has made legislative recommendations which, in the main, call for increased regulation and authority of the FEC. Are there any provisions of the current law that the FEC believes infringe on First Amendment rights that are really not all that necessary to prevent corruption of public officeholders?

To the contrary, the Commission has sent many legislative recommendations to Congress, some repeatedly, that would simplify the reporting requirements for candidates and committees. These recommendations include:

- Allowing the Commission to grant general waivers or exemptions from the extensive reporting, recordkeeping and organizational requirements of the Act, made in 1976 and each year since;
- Not requiring a principal campaign committee of a candidate for the office of President to file pre- and post-election reports if the candidate is no longer seeking election, made in 1980;
- Not requiring trade association political action committees to obtain separate and specific approval each year of each member corporation to solicit their executive and administrative personnel, made in 1976 and each subsequent year.

In addition, many of the provisions of the 1979 Amendments originated as recommendations of the Commission. For example, the following changes, all effected by the 1979 Amendments, were recommended by the Commission:

- Reducing from eleven to six the number of categories of information required on the Statement of Organization;
- Eliminating the requirement that certain candidates file reports;

- -- Eliminating the quarterly filing requirement for party committees and nonparty, noncandidate committees, and establishing the options of filing monthly or semi-annually;
- -- Raising the reporting threshold for independent expenditures by persons other than political committees from $100 to $250; and,
- -- Excising from the definition of "contribution" the phrase "written contract, promise or agreement, whether or not legally enforceable, to make a contribution."

Some of these recommendations, which may appear to increase Commission authority--for example, permitting the Commission to grant general waivers of reporting requirements--are in fact designed to decrease and simplify the burdens of the Act. Thus, the Commission strongly disagrees that it has sought to broaden its authority.

In reviewing Commission regulations and recommending regulatory and statutory revisions to Congress, the Commission has consistently favored approaches which would reduce the burden on candidates and committees and thus encourage greater participation in the political process.

8. When a respondent in a Matter Under Review has responded to a "reason to believe" notice within 15 days or so, how long does it take on the average for the Commission to:

   a) dismiss the complaint; or

   b) find "probable cause to believe"

Of the 54 MURs opened in FY 1981 which proceeded to reason to believe in FY 1981, respondents filed responses within 21 days in only nine MURs. (We have added six days to the 15-day response period to provide for mail delivery of the Commission's notice and the response.) Responses were not received from the other 45 respondents within 21 days, but these 45 MURs were processed in accordance with Commission procedures and late responses were noted in the respective files. Of those nine, three were dismissed, two proceeded to probable cause, one was closed by conciliation, and three remain open and under investigation as of January 1, 1982. The average time between the receipt of the responses in the Commission and

(a) dismissal of the three which were dismissed was 53 days, and

(b) finding of probable cause for two which proceeded to probable cause was 189 days.

United States Senate
WASHINGTON, D.C. 20510

1981 DEC 17 PM 4:44

December 14, 1981

The Honorable John Warren McGarry
Chairman
Federal Election Commission
Franklin Square Building
1325 K Street
Washington, D,C, 20463

Dear Mr. Chairman:

I appreciate your willingness to supplement your November 20, 1981, testimony before the Senate Committee on Rules and Administration with written responses to my questions for the hearing record.

Would you please provide me answers to the following questions:

1. In the FEC's written testimony presented to the Senate Rules Committee on November 20, 1981, it was stated that in 1980 "nearly 13,000 individuals came to the Commission to review over 3 million pages of campaign finance reports filed since 1975." That averages about 50 persons per day visiting the FEC's public records office. Upon what information did the FEC base this 13,000 figure?

2. During your oral testimony, you suggested to Senator Ford that the Commission had stopped harrassing political committees with Requests For Additional Information (RFAI's) for trivial information. How many RFAI's were issued by the FEC during the months of August and September, 1981? How many were issued during December, 1980, January, and February, 1981? Could you send us copies of these RFAI's?

3. How much did the FEC spend altogether at the administrative level and court level (staff salaries, attorneys' salaries, commissioners' salaries, travel,

xerox, etc.) for each of the following enforcement cases which the FEC ultimately lost in court? Briefly describe how those costs were computed.

FEC v. Phillips Publishing, Inc.

FEC v. National Right to Work Committee

FEC v. Machinists Non-Partisan Political League

4. With respect to the Phillips Publishing case, why did the FEC prosecute Phillips for his anti-Senator Kennedy comments in the promotional material for his newsletter The Pink Sheet on the Left, but dismissed out of hand a similar charge against Penthouse Magazine for promoting Penthouse that had anti-Jimmy Carter comment?

5. Although the District Court ruled against the FEC in Phillips, the FEC appealed the decision but then recently withdrew its appeal noting that the FEC nevertheless disagreed with the District Court's opinion. Does this mean that the FEC intends to prosecute in the future cases like the Phillips case?

6. I understand that the FEC prepares weekly or monthly summaries of FEC attorneys' time and General Counsel staff time spent on various matters. Could you please provide copies of all of these summaries for the past 12 months?

7. The Federal Communications Commission, an independent agency like the FEC, has recommended to Congress less FCC regulation, by calling for the repeal of the "Fairness Doctrine" and "Equal Time Rules" which infringe on broadcaster's First Amendment rights. The FEC, on the other hand, has made legislative recommendations which, in the main, call for increased regulation and authority of the FEC. Are there any provisions of the current law that the FEC believes infringe on First Amendment rights that are really not all that necessary to prevent corruption of public officeholders?

8. When a respondent in a Matter Under Review has responded

to a "reason to believe" notice within 15 days or so, how long does it take on the average for the Commission to:

a) dismiss the complaint

or

b) Find "probable cause to believe"

9. Does the Commission have any manuals or guidelines for its investigators and lawyers to go by in conducting an investigation, when to stop, who to depose, etc.? If not, why not?

Again, I appreciate your cooperation, and I look forward to your early response.

Kindest regards.

Sincerely,

J. H.

JESSE HELMS:smb

cc: The Honorable Charles McC. Mathias, Jr.

Attachment A

Federal Election Commission

Annual Report 1980

Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

The MUR resolved by conciliation was closed in 107 days.

9. Does the Commission have any manuals or guidelines for its investigators and lawyers to go by in conducting an investigation, when to stop, who to depose, etc.? If not, why not?

No. The only items in the nature of "enforcement manuals" that the Commission has are essentially form books used to ensure uniformity in the handling of compliance matters; they have no bearing on policy decisions, which only the Commission is empowered to make.

The Office of General Counsel conducts investigations after reason to believe findings have been voted by the Commission. All investigations using depositions or interrogatories are conducted pursuant to subpoena on Commission order. Thus, the Office of General Counsel cannot act without the knowledge and consent of the Commission to take depositions or interrogatories; rather, the Commission, by an affirmative vote of four of its members, must approve such activity.

Because the decision to issue subpoenas, or, if necessary, to seek judicial enforcement of subpoenas, rests with the Commission and must be made on the basis of a determination as to what evidence is necessary in a particular matter, there are no written guidelines or manuals instructing when to conduct (or not to conduct) such examinations. Similarly, the Commission votes to conclude investigations--or, when appropriate, to take no further action--on a case-by-case basis.

Your interest in these activities of the Commission is appreciated. Please do not hesitate to contact us again if you desire further information or assistance.

Sincerely,

Frank P. Reiche

Frank P. Reiche
Chairman for the Commission

Attachments

Attachment B

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

26 August 1981

Identification No:

Reference: October Quarterly Report (7-1-80 to 9-30-80)

Dear

This letter is prompted by the Commission's preliminary review of your October Quarterly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-The ending cash balance of one report should be exactly the same as the beginning cash balance of the next. The July Quarterly report shows an ending balance of $13,466 (Line 8) Column B, while the October Quarterly report shows a beginning balance of $6,951 (Line 6(b)) Column A.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Mark Kleinman

Mark Kleinman
Reports Analyst
Reports Analysis Division

Reports Analysis Division

Documents processed (Pass I),* filed and controlled	53,483
Documents processed for itemized information (Pass III)*	36,926
Items entered (individual transactions)	348,459
Reports reviewed	13,163
Requests for additional information	2,420
Names of candidate committees published for failure to file reports	804
Compliance matters referred to the Office of General Counsel or Audit Division	203
Assistance to Secretaries of State (State election offices)	1,790
Notices of failure to file with State election offices	817

Audits Completed by Audit Division, 1975-1980

Presidential	35
Senate	11
House	96
Party (National)	27
Party (Other)	65
Nonparty	33
TOTAL	267

Public Records Office

Campaign finance reports made available to the public (total pages)	
1975-1980	3,099,000
1980 only	642,774
Visitors served	12,960
Responses to requests for campaign finance reports	7,399
Responses to other requests for information	17,339
Statements and reports copied for requesters (total pages)	452,307

Public Communications Office

Responses to Information Requests by Federal Candidates, Committees and the General Public:

Telephone inquiries	53,738
General information letters	518
Requests for FEC materials	14,154
Requests from visitors to the Commission	262

Outreach Programs Sponsored by the Commission:

Informational mailings	77
Public appearances by Commissioners and FEC staff	71

Press Office

Press releases	197
Telephone inquiries	8,328
Visitors	849
Freedom of Information Act requests	83

Publications

Number of publications	21

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*Computer entry of campaign finance information occurs in two phases. In the first phase (Pass I), summary information, including microfilm location, gross receipts and gross expenditures, is entered into the computer within 48 hours of its receipt. During the second phase (Pass III), itemized information is entered.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

26 August 1981

Identification No:

Reference: October Quarterly Report (7/1/80 - 9/30/80)

Dear

This letter is prompted by the Commission's preliminary review of your October Quarterly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-Schedule B of your report (pertinent portion attached) discloses a contribution which appears to exceed the limits set forth in 2 U.S.C. 441a. The Act precludes a committee from making contributions to another political committee in excess of $5,000 per calendar year. If you have made an excessive contribution, the Commission recommends that you notify the recipient and request a refund of the amount in excess of $5,000. (Any refund itemized on Schedule A should be reported on Line 16 of the Detailed Summary Page of your next report.)

If you find the contribution in question was disclosed incompletely or incorrectly, please amend your original report with the clarifying information.

Although the Commission may take further legal steps concerning the excessive contribution, prompt action by you to obtain a refund will be taken into consideration by the Commission. The recipient of the excessive contribution is also being informed of this matter.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Mike Tangney

Mike Tangney
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 25, 1981

Identification No:

Reference: April 15 Quarterly Report (1/1/80 - 3/31/80)

Dear

This letter is prompted by the Commission's preliminary review of your April Quarterly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-You have reported a negative ending cash balance of $1,371.97. This suggests that you have either overdrawn your account, made a mathematical error, or incurred a debt. If there is a debt or obligation, please show a zero balance on Line 8 (Summary Page) and reflect this amount and the type of debt on the debt schedule (Schedule D) and Line 10.

-Schedule C of your report (pertinent portion attached) discloses a contribution which appears to exceed the limits set forth in 2 U.S.C. 441a. The Act precludes an individual or a political committee, other than a multicandidate committee, from making a contribution to a candidate for Federal office in excess of $1000 per election. The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. The Commission notes that a full loan repayment has been made to the donor.

If you find the contribution in question was disclosed incompletely or incorrectly, please amend your original report with the clarifying information.

Although the Commission may take further legal steps concerning the acceptance of an excessive contribution, your prompt refund of the excessive amount to the donor will be taken into consideration by the Commission.

An amendment to your original report correcting the above problems should be filed with the Secretary of the Senate, 119 D Street, NE, Room 623, Washington, DC 20510, within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 523-4172.

Sincerely,

Tracy Keefe for Susan Weber

Susan Weber
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

26 August 1981

Identification No:

Reference: YEAR END REPORT (11/25/80-12/31/80)

Dear

This letter is prompted by the Commission's preliminary review of your Year End Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-Your committee's report was not signed. The treasurer (or designee) must sign all committee filings. It is suggested that your committee consider the designation of an assistant treasurer who can sign in the absence of the treasurer. This will help eliminate any delay in filing your reports. If you choose to designate an assistant treasurer, this information should be noted on an amended Statement of Organization. If you choose not to designate the individual who signed the report as an assistant treasurer, the above referenced report must be amended to include the signature of the proper committee official.

-You have reported a negative ending cash balance of $2,353. This suggests that you have either overdrawn your account, made a mathematical error, or incurred a debt. If there is a debt or obligation, please show a zero balance on Line 8 (Summary Page) and reflect this amount and the type of debt on the debt schedule (Schedule D) and Line 10.

-When you add Lines 11(a), 11(b) and 11(c), they should equal the total indicated on Line 11(d) (Column A and Column B). (Note: There are no figures on the Detailed Summary Page, Lines 11(a) through 11(c), Columns A and B.

-Please clarify the entries from other committees on Schedule A. If these represent contributions from individuals, then the activity should be shown on Line 11(a) of the Detailed Summary Page and Schedule A accordingly. If these represent contributions and/or transfers from committees, then the activity should be shown on Line 11(c) and/or Line 12 of the Detailed Summary Page and Schedule A accordingly.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Mark Kleinman

Mark Kleinman
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 9, 1981

Identification No:

Reference: 12 DAY PRE-GENERAL ELECTION REPORT (10/01/80-10/24/80)

Dear

This letter is prompted by the Commission's preliminary review of your 12 Day Pre-General Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

> -Schedule A of your report (pertinent portion attached) discloses a contribution which appears to exceed the limits set forth in 2 U.S.C. 441a. The Act precludes an individual or a political committee, other than a multicandidate committee, from making a contribution to a candidate for Federal office in excess of $1,000 per election. If you have received a contribution which exceeds the limits, the Commission recommends that you refund to the donor the amount in excess of $1,000. (Any refund itemized on Schedule B should be reported on Line 20B of the Detailed Summary Page of your next report.)
>
> If you find the contribution in question was disclosed incompletely or incorrectly, please amend your original report with the clarifying information.
>
> Although the Commission may take further legal steps concerning the acceptance of an excessive contribution, your prompt refund of the excessive amount to the donor will be taken into consideration by the Commission.

An amendment to your original report correcting the above problems should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515, within fifteen (15) days of the date of this letter. If you need assistance, please

feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 523-4172.

Sincerely,

Edward D. Ryan

Edward Ryan
Reports Analyst
Reports Analysis Division

INTENTIONAL
BLANK

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 9, 1981

Identification No:

Reference: July Monthly (6/1/80-6/30/80)

Dear

This letter is prompted by the Commission's preliminary review of your July Monthly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-Your report discloses $1,500.00 in contributions to Federal candidates and other political committees on line 21 of the Detailed Summary Page. However, on Schedule B supporting line 21 you have only itemized $600.00 in contributions. Please be advised that all contributions to Federal candidates and/or committees must be itemized on Schedule B regardless of amount.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Mike Tangney

Mike Tangney
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 10, 1980

Identification No:

Reference: October 15 Report (7/1/80 - 9/30/80)

Dear

This letter is prompted by the Commission's preliminary review of your October Quarterly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-When a committee reports a loan from a candidate, it is necessary to clarify whether or not the candidate used his/her own funds. If a loan is obtained from a bank and forwarded to the committee, the name and address of the lending institution, along with the interest rate, duration, and terms of the loan, must be reported.

An amendment to your original report correcting the above problems should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515, within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 523-4172.

Sincerely,

Anthony Raymond

Anthony Raymond
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2 September 1981

Identification No:

Reference: July Quarterly 4/1/80-6/30/80

Dear

This letter is prompted by the Commission's preliminary review of your July Quarterly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-The ending cash balance of one report should be exactly the same as the beginning cash balance of the next. The April Quarterly report shows an ending balance of $8,256.74 (Line 10) Column A, while the July Quarterly report shows a beginning balance of $6,137.41 (Line 7) Column A.

-On line 22(a) of the Detailed Summary Page you disclose a transfer out to a political committee. However, you have failed to itemize this expenditure on Schedule B.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Theresa C Harley

Theresa Harley
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

February 5, 1981

Identification No:

Reference: 30 Day Post-General Election Report (10/16/80 -11/24/80)

Dear

This letter is prompted by the Commission's preliminary review of your 30 Day Post-General Election Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-Each new loan that is made to the committee should be itemized separately on Schedule C.

-When a committee reports a loan from a candidate, it is necessary to clarify whether or not the candidate used his/her own funds. If a loan is obtained from a bank and forwarded to the committee, the name and address of the lending institution, along with the interest rate, duration, and terms of the loan, must be reported.

-On Schedule B you disclose a loan repayment made to the candidate. This total should be reported on Line 19a of the Detailed Summary Page.

An amendment to your original report correcting the above problems should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515, within fifteen (15) days of the date of this letter. If you need assistance, please

feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 523-4172.

Sincerely,

Theresa A. Keefer

Theresa Keefer
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 5, 1981

Identification No:

Reference: October Monthly (9/1/80 - 9/30/80) Report

Dear

This letter is prompted by the Commission's preliminary review of your October Monthly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-The total amount of itemized contributions from individuals on Schedule A, Line 11, is $7,523.75. The total amount of unitemized contributions, as shown on the Detailed Summary Page, is $7,888.19. The figure on Line 11a, Column A, should be the total of these two amounts.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Penny Harms

Penny Harms
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 5, 1981

Identification No:

Reference: October 15 Quarterly Report (7/01/80 - 9/30/80)

Dear

This letter is prompted by the Commission's preliminary review of your October Quarterly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-Your committee reports a total of $105,416.00 in debts and obligations owed by your committee. Please submit Schedules C or D to support this entry.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Lisa J. Stolaruk

Lisa Stolaruk
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 5, 1981

Identification No:

Reference: October Monthly (9/1/80 - 9/30/80) Report

Dear

This letter is prompted by the Commission's preliminary review of your October Monthly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-When you add the memo entry figure on Line 11a and the total itemized contributions from individuals disclosed on Schedule A, they should equal the total shown on Line 11a, Column A. The figure shown in Column B for Line 11a should reflect the total itemized and unitemized contributions from individuals received for the calendar year-to-date.

Also, you disclose $9,200 in cash contributions on page 13 of 14 of Schedule A. This figure does not appear to be included in the total shown on Line 11a, Column A. Please be advised that 441g of the Federal Election Campaign Act states that "no person shall make contributions of currency of the United States...to or for the benefit of any candidate which, in the aggregate, exceed $100". If any individual has given over $100 in cash, the amount over $100 should be returned to the contributor.

-Schedule B for Line 21 discloses a $5,000 contribution made to the Campaign Account for Richard Stone for the primary election. Your committee's May Monthly report discloses two $2,500 contributions to Richard Stone also designated for the primary.

The Senator Richard (Dick) Stone Campaign Committee reports the April contributions as going toward the primary and the September contribution as going towards the run-off election. Please amend your report to indicate the appropriate designation for the second $5,000.

If the second contribution was made toward the run-off election, please indicate that on your amended report. If all three contributions were made for the primary election, please note that 441a of the Federal Election Campaign Act prohibits a multicandidate committee from contributing over $5,000 to any Federal candidate or his/her authorized committee for any election.

If you have made excessive contributions, the Commission recommends that you notify the recipient and request a refund of the amount in excess of $5,000. (Any refund should appear on Line 16 of Schedule A of your next report.)

Although the Commission may take further legal steps concerning any excessive contribution, prompt action by you to obtain a refund will be taken into consideration.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Penny Harms

Penny Harms
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON,D.C. 20463

February 12, 1981

Identification No:

Reference: October 15th Quarterly Report 7/1/80-9/30/80

Dear

This letter is prompted by the Commission's preliminary review of your October Quarterly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-You have not identified the occupations of some of your contributors. You should state the actual job title, rather than "employee", "executive" or "businessman".

-The name of the employer of some of your contributors needs to be provided. "Employer" means the organization or person by whom an individual is employed. 11 C.F.R. 100.21. If the contributor is self-employed, you should so state.

-Each committee utilizing separate Federal and Non-Federal accounts is required to allocate any administrative, registration and get-out-the-vote expenses between the accounts in proportion to the amount of funds expended on Federal and Non-Federal elections or on another reasonable basis. 11 C.F.R. 106.1.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Alva Smith

Alva Smith
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1981

Identification No:

Reference: 30 Day Post-General Election Report (10/16/80 - 11/24/80)

Dear

This letter is prompted by the Commission's preliminary review of your 30 Day Post-General Election Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-Please provide FEC Form 3z (the Consolidation Report of Receipts and Disbursements) to reflect the activity of joint fundraising committees, and to complete your filing. In addition, please be advised that joint-fundraising committees require candidate authorization (FEC Form 2), like other authorized committees.

An amendment to your original report correcting the above problems should be filed with the Secretary of the Senate, 119 D Street, NE, Room 623, Washington, DC 20510, within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 523-4172.

Sincerely,

Pamela Brown
Senior Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1981

Identification No:

Reference: July Quarterly Amendment (4/1/80 to 6/30/80)

Dear

This letter is prompted by the Commission's preliminary review of your July Quarterly Amendment. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-You have indicated that the "contribution in-kind" to Jim Abdnor was intended for both the primary and the general elections. Please provide a breakdown of this contribution to provide the amount intended for the primary and the amount intended for the general.

-You are advised that a multi-candidate committee may only contribute $5,000 per election to a federal candidate.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Mark Kleinman

Mark Kleinman
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 29, 1981

Identification No:

Reference: October Quarterly Report (7/1/80 to 9/30/80)

Dear

This letter is prompted by the Commission's preliminary review of your October Quarterly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-You have listed in-kind contributions. No funds were actually spent, therefore, in-kind entries must be reported as both contributions and as expenditures to properly reflect the transactions and included in the totals on the Detailed Summary Page.

-For future reports, you are advised that you should provide the office sought, including state and district, for each contribution to an authorized committee of a federal candidate. (11 C.F.R. 104.3(b)(3)(v))

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Mark Kleinman

Mark Kleinman
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 28, 1981

Identification No:

Reference: October 15 Quarterly Report (7/1/80 - 9/30/80)

Dear

This letter is prompted by the Commission's preliminary review of your October Quarterly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-Please clarify all expenditures made for the purpose of campaign material, campaign billboards, and radio ads. If a portion or all of these expenditures were made on behalf of federal candidate(s), they should be identified as such on Schedule B, Line(s) 21 or 23, as appropriate, to include the amount, name, address, and office sought by each candidate(s).

-You must provide the aggregate amount of coordinated expenditures for each Federal candidate your committee supported in the General election.

An amendment to your original report correcting the above problems should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 357-0026.

Sincerely,

Alva Smith

Alva Smith
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 12, 1981

Identification No:

Reference: 12 Day Pre-General Election Report (10/01/80 - 10/17/80)

Dear

This letter is prompted by the Commission's preliminary review of your 12 Day Pre-General Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-You have not identified the occupations of some of your contributors. You should state the actual job title, rather than "employee", "executive" or "businessman".

-The name of the employer of some of your contributors needs to be provided. "Employer" means the organization or person by whom an individual is employed. 11 C.F.R. 100.21. If the contributor is self-employed, you should so state.

-Schedule A of your report (pertinent portion attached) discloses a contribution which appears to exceed the limits set forth in 2 U.S.C. 441a. The Act precludes an individual or a political committee, other than a multicandidate committee, from making a contribution to a candidate for Federal office in excess of $1,000 per election. If you have received a contribution which exceeds the limits, the Commission recommends that you refund to the donor the amount in excess of $1,000. (Any refund itemized on Schedule B should be reported on Line 20 of the Detailed Summary Page of your next report.)

If you find the contribution in question was disclosed incompletely or incorrectly, please amend your original report with the clarifying information.

Although the Commission may take further legal steps concerning the acceptance of an excessive contribution, your prompt refund of the excessive amount to the donor will be taken into consideration by the Commission.

An amendment to your original report correcting the above problems should be filed with the Secretary of the Senate, 119 D Street, NE, Room 623, Washington, DC 20510, within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 523-4172.

Sincerely,

Pamela Brown
Senior Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 12, 1981

Identification No:

Reference: 30 DAY POST-GENERAL REPORT (10/16/80 - 11/24/80)

Dear

This letter is prompted by the Commission's preliminary review of your 30 Day Post-General Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

- -The ending cash balance of one report should be exactly the same as the beginning cash balance of the next. The 12 Day Pre-General report shows an ending balance of $8,354.51 (Line 8) Column A, while the 30 Day Post-General report shows a beginning balance of $3,453.23 (Line 23) .
- -You report a receipt from the Weisner-Brown Oil Company of $1000. Please attribute this receipt to the individual(s) actually giving the contribution.

An amendment to your original report correcting the above problems should be filed with the Secretary of the Senate, 119 D Street, NE, Room 623, Washington, DC 20510, within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 523-4172.

Sincerely,

Benita Marcus.

Benita Marcus
Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 2, 1980

Identification No:

Reference: October 15 Report (5/1/80-9/30/80)

Dear

This letter is prompted by the Commission's preliminary review of your October Quarterly Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-When a committee reports a loan from a candidate, it is necessary to clarify whether or not the candidate used his/her own funds. If a loan is obtained from a bank and forwarded to the committee, the name and address of the lending institution, along with the interest rate, duration, and terms of the loan, must be reported.

An amendment to your original report correcting the above problems should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515, within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 523-4172.

Sincerely,

Susan Kaltenbaugh

Susan Kaltenbaugh
Senior Reports Analyst
Reports Analysis Division

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 4, 1980

Identification No:

Reference: 12 Day Pre-General Report (10/1/80 to 10/15/80)

Dear

This letter is prompted by the Commission's preliminary review of your 12 Day Pre-General Report. The review raised questions as to specific contributions and/or expenditures, and the reporting of certain information required by the Federal Election Campaign Act. An itemization of these areas follows:

-Your report does not include Schedules C and D detailing outstanding loans and debts.

-Schedule A of your report (pertinent portion attached) discloses a contribution which appears to exceed the limits set forth in 2 U.S.C. 441a. The Act precludes an individual or a political committee, other than a multicandidate committee, from making a contribution to a candidate for Federal office in excess of $1,000 per election. If you have received a contribution which exceeds the limits, the Commission recommends that you refund to the donor the amount in excess of $1,000. (Any refund itemized on Schedule B should be reported on Line 20 of the Detailed Summary Page of your next report.)

If you find the contribution in question was disclosed incompletely or incorrectly, please amend your original report with the clarifying information.

Although the Commission may take further legal steps concerning the acceptance of an excessive contribution, your prompt refund of the excessive amount to the donor will be taken into consideration by the Commission.

An amendment to your original report correcting the above problems should be filed with the Clerk of the House of Representatives, 1036 Longworth House Office Building, Washington, DC 20515, within fifteen (15) days of the date of this letter. If you need assistance, please

feel free to contact me on our toll free number, (800) 424-9530. My local number is (202) 523-4048.

Sincerely,

Suzanne Wilson

Suzanne Wilson
Section Chief
Reports Analysis Division

DIVISION: OFFICE OF GENERAL COUNSEL - I

MONTH: November YEAR: 1980

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Begun This Month	Units Completed This Month	Units In Process End
ENERAL COUNSEL & ADMINISTRATION	29	841			65						
BUDGET & PLANNING		95									
LABOR MANAGEMENT		123			20						
EGULATIONS	30	234			10						
ONGRESSIONAL INQUIRIES	31	164									
LEGISLATION	32	9									
POLICY (FOIA)	33	112									
LIBRARY	34	272									
UR INDEX	35	19									
LEGAL REVIEW - PRESIDENTIAL	36	77			12						
LEGAL REVIEW - OTHER	37	574			10						
DVISORY OPINIONS	38	836			18		# A.O.S	18	9	9	18
UDIT REVIEW - PRESIDENTIAL	39	388			5		# RPTS.	9		4	5
UDIT REVIEW - OTHER	40	61			12		# RPTS.	4		2	2
437q DEFENSIVE LITIGATION	41	223			20		# SUITS	7			7
437 h DEFENSIVE LITIGATION	42	224			28		# SUITS	5		1	4
TITLE 26 DEFENSIVE LITIGATION	43	8			2		# SUITS	6		4	2
THER FECA DEFENSIVE LITIGATION	44	65			2		# SUITS	4			4
THER NON-FECA DEFENSIVE LITIGATION	45	101			9		# SUITS	4			4
437 g OFFENSIVE LITIGATION	46	491	12		47		# SUITS	8		1	7
437d OFFENSIVE LITIGATION	47	53					# SUITS	11	1	7	5
437h OFFENSIVE LITIGATION	48	35			21		# SUITS				
ON-FILERS OFFENSIVE LITIGATION	49	37			1		# SUITS				
THER FECA OFFENSIVE LITIGATION	50	266			24		# SUITS	1			1
ON-FECA DEFENSIVE LITIGATION	51						# SUITS				
XTERNAL ENFORCEMENT	52	2018			67		# SUITS	66	14	1	78

DIVISION: OFFICE OF GENERAL COUNSEL - 2

MONTH: December YEAR: 1980

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units in Process Beginning	Units Began This Month	Units Completed This Month	Units in Process End
GENERAL COUNSEL & ADMINISTRATION	29	948			50						
BUDGET & PLANNING		103									
LABOR MANAGEMENT		47									
REGULATIONS	30	230									
CONGRESSIONAL INQUIRIES	31	197									
LEGISLATION	32	7									
POLICY (FOIA)	33	80			10						
LIBRARY	34	282									
UR INDEX	35	27									
LEGAL REVIEW - PRESIDENTIAL	36	117			5						
LEGAL REVIEW - OTHER	37	534			10						
ADVISORY OPINIONS	38	689					# A.O.S	18	8	14	12
AUDIT REVIEW - PRESIDENTIAL	39	278					#RPTS.	5	2	1	6
AUDIT REVIEW - OTHER	40	91					# RPTS.	2	4	2	4
437g DEFENSIVE LITIGATION	41	270					#SUITS	7	1	2	6
437 h DEFENSIVE LITIGATION	42	618					# SUITS	4			4
TITLE 26 DEFENSIVE LITIGATION	43	102					# SUITS	2			2
OTHER FECA DEFENSIVE LITIGATION	44	34					# SUITS	4		2	2
OTHER NON-FECA DEFENSIVE LITIGATION	45	78					# SUITS	4		1	3
437 g OFFENSIVE LITIGATION	46	223					# SUITS	7	1		8
437d OFFENSIVE LITIGATION	47	73					# SUITS	5			5
437h OFFENSIVE LITIGATION	48						# SUITS				
NON-FILERS OFFENSIVE LITIGATION	49						# SUITS				
OTHER FECA OFFENSIVE LITIGATION	50	520					# SUITS	1			1
NON-FECA DEFENSIVE LITIGATION	51						# SUITS				
EXTERNAL ENFORCEMENT	52	2099	3		23		# SUITS	78	3	1	80

DIVISION: OFFICE OF GENERAL COUNSEL - I PG. 2

MONTH: YEAR:

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Begun This Month	Units Completed This Month	Units In Process End
INTERNAL ENFORCEMENT -PRESIDENTIAL	53	413					# HRS	20	6	1	25
INTERNAL ENFORCEMENT - OTHER	54	935			87		# HRS	95		4	91
HOLIDAY, LEAVE, ETC.	1	2366					[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
AUTHORIZED UNION ACTIVITY	200	40					[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
		11,082	12		460						

DIVISION: OFFICE OF GENERAL COUNSEL - I PG. 2

MONTH: YEAR:

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Begun This Month	Units Completed This Month	Units In Process End
INTERNAL ENFORCEMENT -PRESIDENTIAL	53	456					# MURS	25	7	0	32
INTERNAL ENFORCEMENT - OTHER	54	1580	10		20		# MURS	91	15	4	102
HOLIDAY, LEAVE, ETC.	1	2884									
AUTHORIZED UNION ACTIVITY	200	21									
TOTALS		17,588	13		118						

DIVISION: OFFICE OF GENERAL COUNSEL - I

MONTH: JANUARY YEAR: 1981

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units in Process Beginning	Units Begun This Month	Units Completed This Month	Units in Process End
GENERAL COUNSEL & ADMINISTRATION	29	1003	4.5		89						
BUDGET & PLANNING		64									
LABOR MANAGEMENT		150									
REGULATIONS	30	197									
CONGRESSIONAL INQUIRIES	31	95									
LEGISLATION	32	21									
POLICY (FOIA)	33	137			21						
LIBRARY	34	293									
UR INDEX	35	37									
LEGAL REVIEW - PRESIDENTIAL	36	50									
LEGAL REVIEW - OTHER	37	491			25						
ADVISORY OPINIONS	38	698			15		# A.O.S	12	7	6	13
AUDIT REVIEW - PRESIDENTIAL	39	276			8		# RPTS.	6	3	0	9
AUDIT REVIEW - OTHER	40	131					# RPTS.	4	5	1	8
437g DEFENSIVE LITIGATION	41	341	3		37		# SUITS	6	1		7
437 h DEFENSIVE LITIGATION	42	498			14		# SUITS	4			4
TITLE 26 DEFENSIVE LITIGATION	43	329			21		# SUITS	2			2
OTHER FECA DEFENSIVE LITIGATION	44	90					# SUITS	2			2
OTHER NON-FECA DEFENSIVE LITIGATION	45	68					# SUITS	3			3
437 g OFFENSIVE LITIGATION	46	330			16		# SUITS	8	3		11
437d OFFENSIVE LITIGATION	47	225	3		35		# SUITS	5			6
437h OFFENSIVE LITIGATION	48	93					# SUITS				
NON-FILERS OFFENSIVE LITIGATION	49						# SUITS				
OTHER FECA OFFENSIVE LITIGATION	50						# SUITS	1			1
NON-FECA DEFENSIVE LITIGATION	51						# SUITS				
EXTERNAL ENFORCEMENT	52	1775			31		# SUITS	79	3	5	77

DIVISION: OFFICE OF GENERAL COUNSEL - I

MONTH: February YEAR: 1981

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units in Process Beginning	Units Began This Month	Units Completed This Month	Units in Process End
GENERAL COUNSEL & ADMINISTRATION	29	1451			96						
BUDGET & PLANNING		139									
LABOR MANAGEMENT		75									
REGULATIONS	30	303			8						
CONGRESSIONAL INQUIRIES	31	38									
LEGISLATION	32	103									
POLICY (FOIA)	33	141									
LIBRARY	34	221									
UR INDEX	35	41									
LEGAL REVIEW - PRESIDENTIAL	36	67									
LEGAL REVIEW - OTHER	37	592									
ADVISORY OPINIONS	38	618			24		# A.O.S	13	6	10	9
AUDIT REVIEW - PRESIDENTIAL	39	92			4		# RPTS.	9	1	6	4
AUDIT REVIEW - OTHER	40	96					# RPTS.	8	1	9	0
437g DEFENSIVE LITIGATION	41	316			46		# SUITS	7	0	1	6
437 h DEFENSIVE LITIGATION	42	346					# SUITS	4	3	0	7
TITLE 26 DEFENSIVE LITIGATION	43	129			16		# SUITS	2	0	0	2
OTHER FECA DEFENSIVE LITIGATION	44	184					# SUITS	2	0	1	1
OTHER NON-FECA DEFENSIVE LITIGATION	45	362			49		# SUITS	3	3	0	6
437 g OFFENSIVE LITIGATION	46	332					# SUITS	11	0	0	11
437d OFFENSIVE LITIGATION	47	197			4		# SUITS	5	3	0	8
437h OFFENSIVE LITIGATION	48	0					# SUITS				
NON-FILERS OFFENSIVE LITIGATION	49	0					# SUITS				
OTHER FECA OFFENSIVE LITIGATION	50	88					# SUITS	1	0	0	1
NON-FECA DEFENSIVE LITIGATION	51						# SUITS				
EXTERNAL ENFORCEMENT	52	1404			63		# SUITS	77	1	7	71

DIVISION: OFFICE OF GENERAL COUNSEL - I PG. 2

MONTH: YEAR:

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Begun This Month	Units Completed This Month	Units In Process End
INTERNAL ENFORCEMENT -PRESIDENTIAL	53	454			2		1 HRS	32	0	1	31
INTERNAL ENFORCEMENT - OTHER	54	1811			13		1 HRS	103	0	7	96
HOLIDAY, LEAVE, ETC.	1	2703									
AUTHORIZED UNION ACTIVITY	200	22									
TOTALS		12,382	10.5		327						

DIVISION: OFFICE OF GENERAL COUNSEL - 1

MONTH: March YEAR: 1984

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PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Rec'd This Month	Units Completed This Month	Units In Process End
GENERAL COUNSEL & ADMINISTRATION	29	1546			45						
BUDGET & PLANNING		(215)									
LABOR MANAGEMENT		(272)									
REGULATIONS	30	283			3						
CONGRESSIONAL INQUIRIES	31	186									
LEGISLATION	32	47									
POLICY (FOIA)	33	160			15						
LIBRARY	34	300									
UR INDEX	35	6									
LEGAL REVIEW - PRESIDENTIAL	36	119									
LEGAL REVIEW - OTHER	37	681			19						
ADVISORY OPINIONS	38	625			16		# A.O.S	9	4	7	6
AUDIT REVIEW - PRESIDENTIAL	39	174					#RPTS.	4	1	1	4
AUDIT REVIEW - OTHER	40	53					# RPTS.	0	3	2	5
437g DEFENSIVE LITIGATION	41	359			16		#SUITS	6	1	-	7
437 h DEFENSIVE LITIGATION	42	427			26		# SUITS	7	-	-	7
TITLE 26 DEFENSIVE LITIGATION	43	44					# SUITS	2		1	1
OTHER FECA DEFENSIVE LITIGATION	44	44					# SUITS	1	-	-	1
OTHER NON-FECA DEFENSIVE LITIGATION	45	17			8		# SUITS	6	-	-	6
437 g OFFENSIVE LITIGATION	46	436			5		# SUITS	11	-	-	11
437d OFFENSIVE LITIGATION	47	426			26		# SUITS	8	2	1	[illegible]
437h OFFENSIVE LITIGATION	48	0					# SUITS				
NON-FILERS OFFENSIVE LITIGATION	49	0					# SUITS				
OTHER FECA OFFENSIVE LITIGATION	50	542			18		# SUITS	1	-	-	1
~~NON-FECA OFFENSIVE LITIGATION~~	51	0					# SUITS				
EXTERNAL ENFORCEMENT	52	1370			66		# SUITS	71	3	14	60

DIVISION: OFFICE OF GENERAL COUNSEL - I PG. [illegible]

MONTH: [illegible] YEAR: [illegible]

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Begun This Month	Units Completed This Month	Units In Process End
INTERNAL ENFORCEMENT -PRESIDENTIAL	53	476			30		1 MHS	31	3	2	32
INTERNAL ENFORCEMENT - OTHER	54	1267	10.5		15		1 MHS	96	2	7	91
HOLIDAY, LEAVE, ETC.	1	1480									
AUTHORIZED UNION ACTIVITY	200	32									
		10376	10.5		355						

DIVISION: OFFICE OF GENERAL COUNSEL - I

MONTH: APRIL YEAR: 1981

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units in Process Beginning	Units Begun This Month	Units Completed This Month	Units in Process End
GENERAL COUNSEL & ADMINISTRATION	29	2008			29						
BUDGET & PLANNING		366									
LABOR MANAGEMENT		141									
REGULATIONS	30	342			3						
CONGRESSIONAL INQUIRIES	31	150									
LEGISLATION	32	57									
POLICY (FOIA)	33	98			17						
LIBRARY	34	293									
UR INDEX	35	30									
LEGAL REVIEW - PRESIDENTIAL	36	26									
LEGAL REVIEW - OTHER	37	265			30						
ADVISORY OPINIONS	38	502					# A.O.S	6	4	6	4
AUDIT REVIEW - PRESIDENTIAL	39	233					# RPTS.	4	3	1	6
AUDIT REVIEW - OTHER	40	21					# RPTS.	1	4	2	3
437g DEFENSIVE LITIGATION	41	479			64		# SUITS	7	-	-	7
437 h DEFENSIVE LITIGATION	42	206					# SUITS	7	-	-	7
TITLE 26 DEFENSIVE LITIGATION	43	5					# SUITS	1	-	-	1
OTHER FECA DEFENSIVE LITIGATION	44	126					# SUITS	1	-	-	1
OTHER NON-FECA DEFENSIVE LITIGATION	45	58					# SUITS	6	-	-	6
437 g OFFENSIVE LITIGATION	46	454			10		# SUITS	11	-	-	11
437d OFFENSIVE LITIGATION	47	304					# SUITS	9	1	1	9
437h OFFENSIVE LITIGATION	48						# SUITS				
NON-FILERS OFFENSIVE LITIGATION	49						# SUITS				
OTHER FECA OFFENSIVE LITIGATION	50	648	1.5		114		# SUITS	1	-	-	1
NON-FECA DEFENSIVE LITIGATION	51						# SUITS				
EXTERNAL ENFORCEMENT	52	1437			75		# SUITS	60	-	8	52

DIVISION: OFFICE OF GENERAL COUNSEL - I PG. 2

MONTH: YEAR:

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Begun This Month	Units Completed This Month	Units In Process End
INTERNAL ENFORCEMENT - PRESIDENTIAL	53	877			2		# MURS	32	2	3	31
INTERNAL ENFORCEMENT - OTHER	54	1339			37		# MURS	91	7	16	82
HOLIDAY, LEAVE, ETC.	1	981					▨	▨	▨	▨	▨
AUTHORIZED UNION ACTIVITY	200	39					▨	▨	▨	▨	▨
Total:	-	11,235			302						

DIVISION: OFFICE OF GENERAL COUNSEL - I

MONTH: May YEAR: 1981

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Began This Month	Units Completed This Month	Units In Process End
GENERAL COUNSEL & ADMINISTRATION	29	1634			5						
BUDGET & PLANNING		158			0						
LABOR MANAGEMENT		118			0						
REGULATIONS	30	300			3						
CONGRESSIONAL INQUIRIES	31	42			0						
LEGISLATION	32	3			0						
POLICY (FOIA)	33	249			15						
LIBRARY	34	178			0						
MUR INDEX	35	59			0						
LEGAL REVIEW - PRESIDENTIAL	36	28			0						
LEGAL REVIEW - OTHER	37	407			27						
ADVISORY OPINIONS	38	559			0		# A.O.S	4	6	2	8
AUDIT REVIEW - PRESIDENTIAL	39	373			0		#RPTS.	6	0	3	3
AUDIT REVIEW - OTHER	40	59			0		# RPTS.	3	0	3	0
437g DEFENSIVE LITIGATION	41	417			0		#SUITS	7	-	1	6
437 h DEFENSIVE LITIGATION	42	229			12		# SUITS	7	-	1	6
TITLE 26 DEFENSIVE LITIGATION	43	57			0		# SUITS	1	-	1	0
OTHER FECA DEFENSIVE LITIGATION	44	15			0		# SUITS	1	-	1	0
OTHER NON-FECA DEFENSIVE LITIGATION	45	43			0		# SUITS	6	-	1	5
437 g OFFENSIVE LITIGATION	46	425			82		# SUITS	11	1	-	12
437d OFFENSIVE LITIGATION	47	221	5		0		# SUITS	9	-	-	9
437h OFFENSIVE LITIGATION	48				0		# SUITS				
NON-FILERS OFFENSIVE LITIGATION	49				0		# SUITS				
OTHER FECA OFFENSIVE LITIGATION	50	342	12		140		# SUITS	1	-	-	1
NON-FECA ~~DEFENSIVE~~ Offensive LITIGATION	51						# SUITS				
EXTERNAL ENFORCEMENT	52	1460			47		# SUITS	~~52~~	0	6	46

63

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DIVISION: OFFICE OF GENERAL COUNSEL - I PG. 2

MONTH: YEAR:

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units in Process Beginning	Units Begun This Month	Units Completed This Month	Units in Process End
INTERNAL ENFORCEMENT -PRESIDENTIAL	53	808			39		1 MURS	31	-	3	28
INTERNAL ENFORCEMENT - OTHER	54	1547			18		1 MURS	82	2	13	71
HOLIDAY, LEAVE, ETC.	1	1050					[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
AUTHORIZED UNION ACTIVITY	200	38					[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TOTALS:		11681	1.5		397						

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P/F Budget

DIVISION: OFFICE OF GENERAL COUNSEL - I

MONTH: June YEAR: 1981

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units in Process Beginning	Units Began This Month	Units Completed This Month	Units in Process End
GENERAL COUNSEL & ADMINISTRATION	29	1955			6						
BUDGET & PLANNING		191.			4						
LABOR MANAGEMENT		138			0						
REGULATIONS	30	518			7						
CONGRESSIONAL INQUIRIES	31	28			0						
LEGISLATION	32	0			0						
POLICY (FOIA)	33	260			17						
LIBRARY	34	211			0						
AUR INDEX	35	100			0						
LEGAL REVIEW - PRESIDENTIAL	36	41			0						
LEGAL REVIEW - OTHER	37	733			18						
ADVISORY OPINIONS	38	456			0		# A.O.S	8	0	7	1
AUDIT REVIEW - PRESIDENTIAL	39	197.			0		# RPTS.	3	2	0	5
AUDIT REVIEW - OTHER	40	25.			0		# RPTS.	0	0	0	0
437g DEFENSIVE LITIGATION	41	506			18		# SUITS	6	0	1	5
437 h DEFENSIVE LITIGATION	42	307.			35		# SUITS	6	–	1	5
TITLE 26 DEFENSIVE LITIGATION	43	46			0		# SUITS	0	–	–	0
OTHER FECA DEFENSIVE LITIGATION	44	0			0		# SUITS	0	–	–	0
~~OTHER~~ NON-FECA DEFENSIVE LITIGATION	45	60			0		# SUITS	5	–	1	4
437 g OFFENSIVE LITIGATION	46	262			33		# SUITS	12	–	–	12
437d OFFENSIVE LITIGATION	47	756			38		# SUITS	9	–	–	
437h OFFENSIVE LITIGATION	48						# SUITS				
NON-FILERS OFFENSIVE LITIGATION	49						# SUITS				
OTHER FECA OFFENSIVE LITIGATION	50	132			0		# SUITS	1	–	–	1
NON-FECA ~~DEFENSIVE~~ OFF LITIGATION	51	0			0		# SUITS				
EXTERNAL ENFORCEMENT	52	1355			19		# SUITS	46	2	3	4

DIVISION: OFFICE OF GENERAL COUNSEL - I PG. 2

MONTH: YEAR:

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Began This Month	Units Completed This Month	Units In Process End
INTERNAL ENFORCEMENT -PRESIDENTIAL	53	759			19		# MURS	28	1	1	28
INTERNAL ENFORCEMENT - OTHER	54	1010			27	10	# MURS	71	0	3	68
HOLIDAY, LEAVE, ETC.	1	1750			0						
AUTHORIZED UNION ACTIVITY	200	34			0						
Total's :		10,653	17		377						

GENERAL COUNSEL

DIVISION: OFFICE OF GENERAL COUNSEL - I

MONTH: July YEAR: 1981

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units in Program Beginning	Units Recvd This Month	Units Completed This Month	Units in Process, End
GENERAL COUNSEL & ADMINISTRATION	29	1730			33						
BUDGET & PLANNING		175									
LABOR MANAGEMENT		71									
REGULATIONS	30	438			0						
CONGRESSIONAL INQUIRIES	31	122			10						
LEGISLATION	32	0			0						
POLICY (FOIA)	33	244			0						
LIBRARY	34	252			0						
PUR INDEX	35	66			0						
LEGAL REVIEW - PRESIDENTIAL	36	57			0						
LEGAL REVIEW - OTHER	37	927			31						
ADVISORY OPINIONS	38	309			0		# A.O.S	1	3	2	2
AUDIT REVIEW - PRESIDENTIAL	39	445			6		#RPTS.	5	3	2	6
AUDIT REVIEW - OTHER	40	39			0		# RPTS.	0	0	0	0
437g DEFENSIVE LITIGATION	41	470			7		#SUITS	5	1	–	6
437 h DEFENSIVE LITIGATION	42	250			28		# SUITS	5	–	1	4
TITLE 26 DEFENSIVE LITIGATION	43	0			0		# SUITS	0	–	–	0
OTHER FECA DEFENSIVE LITIGATION	44	0			0		# SUITS	0	–	–	0
NON-FECA DEFENSIVE LITIGATION	45	335			29		# SUITS	4	1	–	5
437 g OFFENSIVE LITIGATION	46	239			0		# SUITS	12	–	1	11
437d OFFENSIVE LITIGATION	47	494	6		32		# SUITS	9	–	2	7
437h OFFENSIVE LITIGATION	48	0			0		# SUITS				
NON-FILERS OFFENSIVE LITIGATION	49	0			0		# SUITS				
OTHER FECA OFFENSIVE LITIGATION	50	17			0		# SUITS	1	–	–	1
NON-FECA ~~DEFENSIVE~~ Offensive LITIGATION	51	0			0		# SUITS				
EXTERNAL ENFORCEMENT	52	1239			12		# SUITS	40	2	4	38

MONTH: YEAR:

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units in Process Beginning	Units Began This Month	Units Completed This Month	Units in Process End
INTERNAL ENFORCEMENT -PRESIDENTIAL	53	805			25		# HRS	28	2	2	28
INTERNAL ENFORCEMENT - OTHER	54	1455			62		# HRS	68	4	5	67
HOLIDAY, LEAVE, ETC.	1	1457			0						
AUTHORIZED UNION ACTIVITY	200	115			0						
Totals :		11,780			278						

DIVISION: OFFICE OF GENERAL COUNSEL - I PG. 2

MONTH: July YEAR: 1981

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Began This Month	Units Completed This Month	Units In Process End
INTERNAL ENFORCEMENT -PRESIDENTIAL	53	732			3		LMRS	28	0	0	28
INTERNAL ENFORCEMENT - OTHER	54	1342			0		LMRS	67	2	10	57
HOLIDAY, LEAVE, ETC.	1	2605									
AUTHORIZED UNION ACTIVITY	200	81			0						
Totals:		12,433	6		191						

DIVISION: OFFICE OF GENERAL COUNSEL - I

MONTH: August YEAR: 1981

RECEIVED
GENERAL COUNSEL

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Opened This Month	Units Completed This Month	Units In Process End
GENERAL COUNSEL & ADMINISTRATION	29	1355									
BUDGET & PLANNING		131									
LABOR MANAGEMENT		74									
REGULATIONS	30	328									
CONGRESSIONAL INQUIRIES	31	25									
LEGISLATION	32	1									
POLICY (FOIA)	33	320									
LIBRARY	34	140	8.5								
UR INDEX	35	156									
LEGAL REVIEW - PRESIDENTIAL	36	63									
LEGAL REVIEW - OTHER	37	661									
ADVISORY OPINIONS	38	458			5		# A.O.S	2	11	2	11
AUDIT REVIEW - PRESIDENTIAL	39	302					# RPTS.	6	1	1	5
AUDIT REVIEW - OTHER	40	11					# RPTS.	0	0	0	
437g DEFENSIVE LITIGATION	41	213			36		# SUITS	6	–	–	6
437 h DEFENSIVE LITIGATION	42	170					# SUITS	4	1	–	5
TITLE 26 DEFENSIVE LITIGATION	43	395			46		# SUITS	0	1	–	1
OTHER FECA DEFENSIVE LITIGATION	44	0					# SUITS	0	–	–	0
OTHER NON-FECA DEFENSIVE LITIGATION	45	489			32		# SUITS	5	–	–	5
437 g OFFENSIVE LITIGATION	46	199			10		# SUITS	11	–	–	11
437d OFFENSIVE LITIGATION	47	225			10		# SUITS	7	2	1	8
437h OFFENSIVE LITIGATION	48						# SUITS				
NON-FILERS OFFENSIVE LITIGATION	49						# SUITS				
OTHER FECA OFFENSIVE LITIGATION	50	31					# SUITS	1	–	–	1
NON-FECA DEFENSIVE LITIGATION	51						# SUITS				
EXTERNAL ENFORCEMENT	52	115			15		# SUITS	32	6	7	31

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Begun This Month	Units Completed This Month	Units In Process End
GENERAL COUNSEL & ADMINISTRATION	29	1657			43						
BUDGET & PLANNING		109									
LABOR MANAGEMENT		81									
REGULATIONS	30	474			8						
CONGRESSIONAL INQUIRIES / LEGISLATION	31	6									
~~LEGISLATION~~	32										
~~POLICY (FOIA)~~ ADMIN LAW	33	337									
LIBRARY	34	275			32						
UR INDEX	35	110									
LEGAL REVIEW - PRESIDENTIAL	36	71									
LEGAL REVIEW - OTHER	37	357			23						
ADVISORY OPINIONS	38	654			1		# A.O.S	11	6	3	14
AUDIT REVIEW - PRESIDENTIAL	39	340					#RPTS.	5	1	2	4
AUDIT REVIEW - OTHER	40	73					# RPTS.	0	1	0	1
437g DEFENSIVE LITIGATION	41	302					#SUITS	6	–	–	6
437 h DEFENSIVE LITIGATION	42	371			17		# SUITS	5	–	–	5
TITLE 26 DEFENSIVE LITIGATION	43	321			53		# SUITS	1	–	–	1
OTHER FECA DEFENSIVE LITIGATION	44	68					# SUITS	0	-	–	0
OTHER NON-FECA DEFENSIVE LITIGATION	45	174			25		# SUITS	5	-	–	5
437 g OFFENSIVE LITIGATION	46	337			23		# SUITS	11	–	1	10
437d OFFENSIVE LITIGATION	47	77					# SUITS	8	-	1	7
437h OFFENSIVE LITIGATION	48						# SUITS	–	–	–	–
NON-FILERS OFFENSIVE LITIGATION	49						# SUITS	–	1	-	1
OTHER FECA OFFENSIVE LITIGATION	50	242			54		# SUITS	1	-	–	1
NON-FECA DEFENSIVE Off LITIGATION	51						# SUITS				
EXTERNAL ENFORCEMENT	52	1134			28		# SUITS	31	0	2	27

DIVISION: OFFICE OF GENERAL COUNSEL

MONTH: August YEAR: 1981

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units in Process Beginning	Units Began This Month	Units Completed This Month	Units in Process End
INTERNAL ENFORCEMENT -PRESIDENTIAL	53	663			10		1 MRS	28	0	1	27
INTERNAL ENFORCEMENT - OTHER	54	845			20		1 MRS	59	0	12	47
HOLIDAY, LEAVE, ETC.	1	2134			0						
AUTHORIZED UNION ACTIVITY	200	49			0						
Totals :		10,212	8.5		209						

DIVISION: OFFICE OF GENERAL COUNSEL - I

MONTH: OCTOBER YEAR: 1981

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Begun This Month	Units Completed This Month	Units In Process End
GENERAL COUNSEL & ADMINISTRATION	29	1868			41						
BUDGET & PLANNING		148									
LABOR MANAGEMENT		16									
REGULATIONS	30	402			9						
CONGRESSIONAL INQUIRIES	31	5									
~~RESEARCH~~	32										
POLICY (FOIA) -ADMIN LAW	33	237			19						
LIBRARY	34	332			8						
UR INDEX /AO INDEX	35	1									
LEGAL REVIEW - PRESIDENTIAL	36	54									
LEGAL REVIEW - OTHER	37	533			14						
ADVISORY OPINIONS	38	465					# A.O.S	14	4	7	11
AUDIT REVIEW - PRESIDENTIAL	39	331			6		# RPTS.	4	-	1	3
AUDIT REVIEW - OTHER	40	124			4		# RPTS.	1	-	1	0
437g DEFENSIVE LITIGATION	41	360			15		# SUITS	6	-	-	6
437 h DEFENSIVE LITIGATION	42	632			64		# SUITS	5	-	-	5
TITLE 26 DEFENSIVE LITIGATION	43	172			10		# SUITS	1	-	-	1
OTHER FECA DEFENSIVE LITIGATION	44						# SUITS	-	-	-	-
OTHER NON-FECA DEFENSIVE LITIGATION	45	179			15		# SUITS	5	1	-	6
437 g OFFENSIVE LITIGATION	46	412			15		# SUITS	10	-	-	10
437d OFFENSIVE LITIGATION	47	117			7		# SUITS	7	-	2	5
437h OFFENSIVE LITIGATION	48	2					# SUITS	-	-	-	-
NON-FILERS OFFENSIVE LITIGATION	49						# SUITS	1	-	1	0
OTHER FECA OFFENSIVE LITIGATION	50	90					# SUITS	1	-	-	1
NON-FECA DEFENSIVE LITIGATION	51						# SUITS				
EXTERNAL ENFORCEMENT	52	1201					# SUITS	29	1	3	27

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units in Process Beginning	Units Began This Month	Units Completed This Month	Units in Process End
INTERNAL ENFORCEMENT – PRESIDENTIAL	53	1070	·		40		I NVES	27	1	1	27
INTERNAL ENFORCEMENT – OTHER	54	1116			31		I NVES	47	0	7	40
HOLIDAY, LEAVE, ETC.	1	1363					[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
AUTHORIZED UNION ACTIVITY	200	48					[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TOTAL		10,994			378						

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Began This Month	Units Completed This Month	Units In Process End
GENERAL COUNSEL & ADMINISTRATION	29	1393			61						
BUDGET & PLANNING		83									
LABOR MANAGEMENT		3									
REGULATIONS	30	398			6						
CONGRESSIONAL INQUIRIES	31	22									
[redacted]	32										
POLICY (FOIA) - ADMIN. LAW	33	235			22						
LIBRARY	34	249									
UR INDEX /AO INDEX	35	40									
LEGAL REVIEW - PRESIDENTIAL	36	19									
LEGAL REVIEW - OTHER	37	496			46						
ADVISORY OPINIONS	38	409					# A.O.S	11	2	5	8
AUDIT REVIEW - PRESIDENTIAL	39	551					# RPTS.	3	1	1	3
AUDIT REVIEW - OTHER	40	52					# RPTS.	-	2		2
437g DEFENSIVE LITIGATION	41	120					# SUITS	6	-	1	5
437 h DEFENSIVE LITIGATION	42	687			37		# SUITS	5	-	-	5
TITLE 26 DEFENSIVE LITIGATION	43	269			29		# SUITS	1	-	-	1
OTHER FECA DEFENSIVE LITIGATION	44						# SUITS	-	-	-	-
OTHER NON-FECA DEFENSIVE LITIGATION	45	268					# SUITS	6	-	-	6
437 g OFFENSIVE LITIGATION	46	424			4		# SUITS	10	-	1	9
437d OFFENSIVE LITIGATION	47	106			27		# SUITS	5	-	1	4
437h OFFENSIVE LITIGATION	48						# SUITS	-	-	-	-
NON-FILERS OFFENSIVE LITIGATION	49						# SUITS	-	-	-	-
OTHER FECA OFFENSIVE LITIGATION	50						# SUITS	1	-	-	1
NON-FECA DEFENSIVE LITIGATION	51						# SUITS				
EXTERNAL ENFORCEMENT	52	1113					# SUITS	27	4	-	31

MONTH: YEAR:

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Begun This Month	Units Completed This Month	Units In Process End
INTERNAL ENFORCEMENT -PRESIDENTIAL	53	698			2		1 MURS	27	1	1	27
INTERNAL ENFORCEMENT - OTHER	54	1126			6		1 MURS	40	2	3	39
HOLIDAY, LEAVE, ETC.	1	1412									
AUTHORIZED UNION ACTIVITY	200	76									
TOTALS:		10,987			233						

MONTH: YEAR:

PROGRAMS	Code	Hours	Overtime Hours	Total Cost	Unpaid Overtime Hours	Unpaid Overtime Cost	Unit of Output	Units In Process Beginning	Units Began This Month	Units Completed This Month	Units In Process End
INTERNAL ENFORCEMENT -PRESIDENTIAL	53	828					# MURS	27	-	1	26
INTERNAL ENFORCEMENT - OTHER	54	639					# MURS	39	-	2	37
HOLIDAY, LEAVE, ETC.	- 1	1991					[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
AUTHORIZED UNION ACTIVITY	200	53					[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
TOTALS:		10396			232						

DANIEL K. INOUYE
HAWAII

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HONOLULU, HAWAII 96850
(808) 546-7550

United States Senate
ROOM 105, RUSSELL SENATE BUILDING
WASHINGTON, D.C. 20510
(202) 224-3934

November 17, 1981

Honorable Charles Mathias, Jr.
Chairman
Rules and Administration
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

In response to a call for a Joint Leadership Task Force to consider amendments to the Federal Election Campaign Laws, and as a result of my review, I wish to submit the following amendments for the Committee's consideration.

Amendment No. 1 amends the Federal Election Campaign Act of 1971 (FECA) to make clear that the term "political committee" includes committees organized to encourage or persuade any individual to become a candidate for federal office.

I have always contended that Congress made it abundantly clear in 1979 that "Draft" committees were to be considered political committees for the purpose of the FECA. However, in March of this year, the United States Court of Appeals for the District of Columbia held that "Draft" committees were not subject to contribution limitations.

If not clarified by this legislation, the above decision may result in a proliferation of so-called "Draft" committees which may collect vast sums of money entirely outside the restrictions and limitations of federal law. Candidates will be discouraged from declaring candidacy, because it will be to their advantage to allow "Draft groups to operate outside all legal restrictions and limitations for as long as possible. Only through enactment of this amendment will the campaign financing laws be preserved as written, and will the Federal Election Commission be in a position to administer these laws effectively.

Amendment No. 2 seeks to reduce the controversy surrounding the nature of independent expenditures by defining, in greater detail, what constitutes "independence" which presently permits a committee or other independent groups to make unlimited expenditures on behalf of or in opposition to a federal candidate.

The controversy has not been limited to any one party, or to any school of thought or philosophy within any one party. In 1980, for example, challenges to the alleged "independence" of various groups were brought by both Democrats supporting the reelection of President Carter, and by Republicans seeking the election of Ronald Reagan. The Federal Election Commission has not acted decisively to resolve the "independence" issue. The FEC regulations relating to "independent expenditures" are thread bare, offering little guidance to candidates, political committees, or the general public. Moreover, these minimal regulations are now obviously dated, and they require considerable amplification in light of experience in recent years with the activities of independent groups. This second amendment addresses these concerns by providing safeguards to ensure true "independence" of any individual, person or group seeking to spend unlimited monies to influence the outcome of a federal election.

Amendment No. 3 would add a new section to the FECA entitled, "Fair Campaign Practices Fact Finding." This section will require the FEC to establish procedures whereby a federal officeholder or candidate may obtain an investigation of any public communications concerning him or her which are felt to be false or misleading. The investigation would be carried out by one or more impartial fact finders chosen by the FEC from among arbitrators accredited by the American Arbitration Association. The fact finders would investigate the communication alleged to be false and misleading and would make a report with conclusions to the FEC. The fact finders would have discovery powers equal to those of the FEC. The FEC would be required to publish the report immediately.

The person requesting the invesitgation would bear all costs of such investigations. However, a candidate is permitted to raise contributions to finance an FEC fact finding inquiry outside of the normal limitations on campaign contributions. This exemption is justified in order to facilitate access to the new fact finding procedure for all candidates. Placing the burden on paying for the investigation on the party requesting it should be an effective deterrent to frivolous requests.

The amendment I suggest, in no way violates the First Amendment Rights of any individual or group, as it provides for no penalties or sanctions regardless of the truth or falsehood of the communication investigated. Furthermore, the bill explicitly provides that any interested party, including the party which was the source of the communication being investigated, will have an opportunity to present evidence to the fact finders.

Only by providing for an impartial mechanism for discounting false and misleading campaign charges can a major step be taken in halting the disturbing increase in this practice in American political campaigns.

In closing, I wish to express my appreciation to the Committee for allowing me to participate in the discussion of this matter. I know the road ahead is not going to be a smooth one for the Committee.

Aloha,

DANIEL K. INOUYE
United States Senator

DKI:ib

97th Congress
1st Session

S. I

To amend the Federal Election Campaign Act of 1971 to clarify that the term "political committee" includes committees organized to encourage or persuade any individual to become a candidate for Federal office.

IN THE SENATE

, 1981

Mr. ---

A BILL

To amend the Federal Election Campaign Act of 1971 to clarify that the term "political committee" includes committees organized to encourage or persuade any individual to become a candidate for Federal office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that Section 431(4) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(4)) is amended by --

(1) Adding at the end thereof the following new subparagraph:

"(D) any committee, club, association, or other group of persons which receives funds aggregating in excess of $1,000, or which makes disbursements aggregating in excess of $1,000, for the purpose of directly or indirectly persuading or encouraging any individual to seek nomination for election, or election, to any Federal office."

S. II

To amend the Federal Election Campaign Act of 1971 to clarify the definition of "independent expenditure" and for other purposes.

IN THE SENATE

, 1981

Mr. --

A BILL

To amend the Federal Election Campaign Act of 1971 to clarify the definition of "independent expenditure" and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that Section 431(17) of the Federal Election Campaign Act of 1971 (2 U.S.C. §431(17)) is amended by inserting in lieu thereof the following new subsection:

(17) The term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

(A) For the purposes of this subsection, "made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate" means--

(i) the person making the independent expenditure did not communicate with, advice or counsel the candidate at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to federal office, including any advice relating to the candidate's decision to seek federal office;

(ii) the person making the independent expenditure does not include as one of its officers, directors or other employees an individual who communicated with, advised or counselled the candidate at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election to federal office, including any advice relating to the candidate's decision to seek federal office;

(iii) the person making the independent expenditure does not retain for these purposes the professional services of any individual or other person also providing those services to the candidate in connection with the candidate's pursuit of nomination for election, or election, to federal office.

S. III

To amend the Federal Election Campaign Act of 1971 to provide for impartial findings of fact with regard to allegations against candidates for Federal office.

IN THE SENATE

, 1981

Mr. ____

A BILL

To amend the Federal Election Campaign Act of 1971 to provide for impartial findings of fact with regard to allegations against candidates for Federal office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

(1) The Federal Election Campaign Act of 1971, as amended, (Public Law 92-225) is amended by inserting after Section 310 (2 U.S.C. 437h) the following new section:

"Section 310a. Fair Campaign Practices Fact Finding.

"(a)(1). Any individual holding Federal office or any candidate for Federal office may file with the Commission a request for findings of fact with regard to any communication concerning such individual or candidate (i) which such person believes to be false or misleading and (ii) which has been publicly disseminated at any public event or through any broadcasting station, newspaper, magazine, leaflet, outdoor advertising facility, direct mailing, or any other type of public communication facility. Such request shall be in writing, shall be signed by the person filing such request, and shall be notarized.

"(2) The Commission, upon receiving a request for fact finding under paragraph (1) of this section shall publish notice of such request and shall assign, within five business days of such request, the matter to a fact finder or finders for investigation pursuant to the provisions of paragraph (3) of this section.

(3)(A) A fact finding investigation under this section shall be conducted by one or more impartial fact finders appointed by the Commission from the national panel of arbitrators accredited by the American Arbitration Association.

"(B) The expenses of the investigation, including reasonable fees for the fact finder or finders,,shall be paid by the person filing a request under paragraph (1) of this section at such rates and in such manner as determined by the Commission.

"(C) The investigation shall be conducted expeditiously in accordance with such rules as the Commission may deem necessary, provided that --

"(1) Opportunity shall be provided to the source or sources of the communication said to be false or misleading to rebut such allegations;

"(2) opportunity shall be provided to any other interested party, including the person making the request under paragraph (1) of this section, to submit evidence to the fact finder or finders;

"(3) the fact finder or finders appointed by the Commission shall have, for the purpose of the investigation, those powers granted to the Commission by Section 307(2), (3), (4) and (5) of this Act (2 U.S.C. 437d(2), (3), (4) and (5); a

"(4) the investigation shall be concluded and the report specified in paragraph (3)(D) of this section shall be submitted to the Commission not later than 60 days after the Commission assigns the matter for investigation pursuant to paragraph (2) of this section, except that if the person filing a request under paragraph (1) of this section is a candidate and the request is filed during the 60-day period before any election for Federal office involving the requesting party, the investigation shall be concluded and the report submitted no later than 15 days after the Commission assigns the matter for investigation.

"(D) Upon conclusion of the investigation, the fact finder or finders shall make a written report to the Commission setting forth --

"(1) The communication investigated, its source, and its means of dissemination;

"(2) such findings of factual background related to the communication as would permit a reasonable person to judge the extent to which the communication is false or misleading, if at all; and

"(3) the fact finder's or finders' own conclusion as to the false or misleading character of the communication, including, if appropriate, any judgment as to the serious character of the request itself.

"This report shall be made public by the Commission not later than three business days following its receipt by the Commission.

"(E) No person shall be subject to civil liability for any report made to the Commission pursuant to this section or for serving as a fact finder hereunder.

"(F) The Commsssion shall take all necessary action to assure that the procedures for requests and investigations provided for by this section are operational not later than January 1, 1982.

(2) Section 441a of the Federal Election Campaign Act of 1972 (2 U.S.C. §441a) is amended by:

(A) Inserting after paragraph (3) the following new paragraph (4):

"(4) The limitations on contributions contained in subparagraphs (1)(A) and (2)(A) do not apply to contributions received by any Federal candidate for the purpose of payment of Commission fees and related legal expenses for an investigation and finding of fact pursuant to Section 310a of this Act, provided that contributions received pursuant to this paragraph must be deposited into a separate account established for this purpose by the candidate's principal campaign committee, and all expenditures from this account must be made for the purposes specified in this paragraph;

(B) Redesignating paragraphs (4) through (8) as paragraphs (5) through (9) respectively

PREPARED STATEMENT OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AGC is: 8,500 of America's leading general contracting firms employing 3,500,000 employees; 113 nationwide chapters; over 20,000 affiliated firms; a $200 billion market; more than 80% of America's contract construction of commercial buildings, highways, industrial and municipal utility facilities; and over 50% of the construction performed abroad by American firms.

The Associated General Contractors of America, and, by extension, its political action committee (AGC PAC), would like to give a wholehearted endorsement to an FEC act amendment proposal which, while not perfect, would substantially improve its AGC contractors' level of involvement with U.S. House and Senate campaigns through AGC PAC. This proposal is contained in the Federal Election Commission's 1980 Annual Report, Chapter 1, Legislative Recommendations. The specific recommendation AGC endorses is titled "Trade Association Solicitation Approval" (2 U.S.C. 441b(b)(4)(D)), and reads as follows:

"Trade association political action committees must obtain the separate and specific approval of each member corporation to solicit their executive and administrative personnel. Some trade associations have thousands of members, and it is a considerable administrative burden to obtain approval to solicit every year. The one-year limitation should be removed, and the trade association should be allowed to solicit until the corporation revokes its approval."

AGC applauds the Commission for this sensible and refreshing recommendation to alleviate a bit of the paperwork burden imposed upon the business community by the federal government in general and the FEC in particular. AGC is pleased to see that Senator Mathias has adopted this recommendation in S. 1851.

In past years, there has been considerable confusion and conflicting guidelines from the FEC of what specifically constitutes a "solicitation," but recent Advisory Opinions, including a 1980 reply to this association, have made the prohibition a bit clearer, and AGC welcomes this move toward clarity.

Currently, AGC PAC must, every year, seek the written approval of each AGC member contractor corporation before it may ask anyone in the corporation for a contribution. It is very difficult for AGC PAC to explain to AGC member contractors that they must sign a form to allow their association (AGC) to solicit the individual dealing with the association or other management-level employees of the corporation, when they know they receive reams of other information from AGC virtually every day. The contractor's "you must be joking" response is only compounded when we begin to explain that he must sign the approval form every year. Requiring that AGC PAC seek and obtain approval for every individual solicitation every year has had a definite negative impact on the ability of AGC to encourage active support for AGC PAC among member contractors, and has therefore had a chilling effect on the exercise of AGC member contractors' right of freedom of political expression through AGC PAC. This brings us to the question of the constitutionality of requiring such approval. The Supreme Court will address this issue soon in its consideration of Bread PAC et al. vs FEC.

Ideally, AGC PAC would like the Congress to amend the FEC Act of 1971 by deleting all references to the necessity for a trade association to seek or obtain the "prior approval" of the association's member corporations before soliciting voluntary contributions from the executive or administrative personnel of the member corporations. This could be achieved by deleting the underlined portions of the following passage of 2 U.S.C. 441b(b)(4)(D), and directing the FEC to redraft all appropriate sections of the FEC Regulations accordingly. This idea was endorsed by Rep. Frenzel in his November 20, 1981 testimony before this committee.

"This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of the trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

At least, however, AGC would like to respectfully urge the Congress to adopt the FEC's recommendation, to relax the requirement for approval for solicitation by a trade association's federal PAC from the current yearly requirement to a once-until-revoked standard, in any legislation resulting from these hearings.

AGC would also like to take this opportunity to comment on S. 1851, very recently introduced by the Chairman of the Rules Committee. In general, AGC welcomes the bill's proposed increases in thresholds for detailed reporting of various campaign and PAC expenditures. This attack on unnecessary recordkeeping and paperwork for relatively small amounts of money is indeed good news.

Diametrically opposed to this goal, however, is S. 1851's Section 8, requiring reporting and recordkeeping of administrative expenses of political action committees. While the bill does not specifically address trade associations' separate segregated funds, we assume the Commission would, as it has in the past, extend all corporate and union provisions of the law to parallel functions of trade associations.

All corporations, unions and associations have their own, frequently unique, forms of recordkeeping and accounting. AGC, for example, does not itemize its budget for membership communications into categories that would fit neatly into the classification so broadly outlined by S. 1851. Consequently, such legislation could result in major expenditures by AGC to revise its financial and bookkeeping operation. To what end? The required reporting is not of campaign expenditures, only those privileged communications that some think could remotely possibly be potentially related to future outcomes of elections. Therefore, AGC PAC respectfully opposes those portions of S. 1851 that would impose additional reporting and recordkeeping requirements upon political action committees.

PREPARED STATEMENT OF THE CHAMBER OF COMMERCE OF THE UNITED STATES BY CRAIG BRIGHTUP[1]

The Chamber of Commerce of the United States is pleased to have the opportunity to comment on the application and administration of the Federal Election Campaign Act of 1971, as amended, particulary at this critical time when Congress is considering a number of possible changes in the law. The Chamber's membership—which now consists of over 197,000 business firms, large and small; over 2,700 chambers of commerce in the United States and abroad; and 1, 350 trade and professional associations—is deeply concerned with this issue as it determines the rules by which federal candidates and committees receive their funds.

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[1] Director Legislative and Political Issues, Chamber of Commerce of the United States.

Senator Charles McC. Mathias, Jr. (R-MD.) has introduced amendments to the 1971 Federal Election Campaign Act, which increase contribution levels, revise disclosure procedures, and modify enforcement and administration provisions of the country's basic election law. The amendment package (S.1851) is to provide a vehicle for comment on the application and administration of the Act, as well as other proposals in the Senate.

The Chamber supports reasonable limitations on political contributions. To broaden the base of individual giving, we favor the use of tax deductions and credits. Further, we support reasonable disclosure of the source and recipient of contributions and strict limitations on the use of cash. However, any legislation which provides for taxpayer subsidies to House or Senate campaigns dangerously extends the governments role in a traditionally voluntary political process based on individual choice.

The Chamber advocates simplifying, in every feasible manner, the recordkeeping and reporting requirements of the Act, particulary so as to minimize the volume and detail of reporting required. There are a number of things that could be done to reduce the nonessential requirements without altering the intent of the law.

INDIVIDUAL LIMITS

Statistics on the last election, released by the Federal Election Commission, show the cost of campaigning for Congress was 23% higher than in 1978. This figure reflects a predictable trend based on past election cycles.

Raising individual contribution ceilings may be an appropriate response to the rising costs of federal campaigns. Commensurate with this, increasing the dollar levels at which contributions and expenditures must be disclosed would facilitate reporting and reduce paperwork.

The Chamber opposes waiving contribution limits to a campaign when a candidate spends more than $35,000 from personal funds, as proposed in S. 1766 by Senator Alan Cranston (D-Calif.). This type of government intrusion would extend far beyond reasonable accounting and reporting procedures.

PAC LIMITS

It is apparent that political action committees (PACs) are a very popular instrument for individual political participation. The continued growth of PACs gives ample evidence that Americans find them representative of their individual and collective beliefs. Contributions to PACs, including separate segragated funds, are voluntary.

Critics of PACs seem convinced that PACs have more impact on how a Congressman votes than they really do, and advocate restraints on their contribution activity. Figures from the FEC show that all PACs contributed less than one quarter (22%) of the aggregate receipts for Congressional candidates in the last election. Furthermore, contributions by corporate PACs comprised only 7% of the total receipts for all House and Senate candidates during the 1980 election cycle.

The Chamber opposes any reductions in the present PAC spending limits. PACs help sustain an open, democratic election process without undue or disproportionate influence.

PAC SOLICITATIONS

A variety of restrictions directed toward corporations, membership organizations, and trade associatons tend to stifle solicitations. This is exemplified in "Bread PAC" v. FEC, currently pending before the United States Supreme Court.

The case—which was initiated by the Bread Political Action Committee and other plaintiffs—challenges 1976 amendments to the law that require associations to obtain permission from their corporate members before soliciting for PAC contributions. These amendments also limit such solicitations to stockholders, executives, and administrative staffs of corporate member.

Corporations giving prior approval for a trade association PAC solicitation must renew the agreement every year. In addition, the approval of one trade association

PAC is to the exclusion of all others—despite corporate membership in more than one association.

The Chamber contends that the Act violates an association's First Amendment right of free speech by severely limiting its ability to solicit PAC contributions from members. Furthermore, an association's Fifth Amendment right of due process is abridged by putting limitations on its ability to solicit PAC contributions, while not putting the same limitations on solicitations by other groups, such as unions and independent committees. Finally, the amendments are unreasonably vague and overly broad by defining the term "solicitation" as "*anything* which *might* fairly be deemed a request for a contribution" (Emphasis added).

Corporations experience problems when they attempt to communicate about their PACs in newsletters, annual reports, or other nonpolitical publications. The mere notification of a PACs existence can constitute a solicitation in the eyes of the FEC, and trigger compliance with a number of regulatory requirements.

For instance, a large corporation establishing a PAC might choose to solicit only executive and administrative personnel, and stockholders. The corporation is restricted from announcing the new program in its newsletter, fearing circulation outside the group being solicited.

ESTABLISHMENT AND ADMINISTRATIVE COSTS

Corporation-sponsored PAC funds used for political activities are accumulated through voluntary individual contributions. The Act states that corporate treasury funds, including funds obtained in commercial transactons, may be used for the establishment, administration, and solicitation of contributions to its PAC. Several other types of qualified political disbursements—such as partisan communications—are also permissible.

The proposal in S. 1851 to expand reporting requirements to include establishment, administration, and solicitation costs for separate segregated funds only adds to the bureaucracy. No electoral fair play objective is served. The ultimate goal of any amendments should be a reduction in paperwork—not more of the same.

The obvious result of these proposed requirements would be a larger role for the FEC, which already has difficulty coping with the demands placed on it. Further, these new requirements would tend to frustrate creation or maintenance of corporate- or association-sponsored PACs, thus reducing individual participation in the political process.

FEDERAL ELECTION COMMISSION

To simply abolish the FEC would ignore the fact that an estimated 700 to 800 million dollars exchanged hands during the last election. How campaigns are financed influences the make-up of Congress, and ultimately the laws that govern the country. Assuming the Commission will be involved in future elections, there is a need for thorough review and revision of the Act, to revise any provisions where experience has shown that serious problems of interpretation and application exist.

Despite obvious flaws stemming from the consensus process of decision-making, the bipartisan approach of the FEC should continue with a rotating Chairman. One individual operating as an election law administrator would be constantly hounded about partisan affiliation, as would a Chairman—picked by the President for a four year term—to preside over the current agency. The Ex Officio, nonvoting Commissioners representing the House and Senate should continue to take part in Commission meetings as valid surrogates for the Hill. Their influence is minimal because they cannot vote, but if used effectively they could create a better relationship between the FEC and Congress.

Since the Chairman serves for only one year—alternating between Republican and Democrat—perhaps Congressional attention should focus on a clearly defined executive officer. Granted, there is a provision in the Act calling for a Staff Director, but in practice there appears to be some confusion over this position and that of the General Counsel.

The question of when to audit committees is also confusing. The Act calls for audits, but execution causes antagonism and dissent. This is illustrated by a recent letter to the FEC requesting a temporary stay in auditing until procedural adjustments are enacted. The letter is signed by ranking officials of the Republican and Democratic National Committees, as well as representatives of almost every major presidential aspirant in 1980.

The Chamber endorses Federal financing, through the voluntary income tax checkoff, of Presidential election campaigns only. However, in view of repayment problems to the U.S. Treasury experienced by most campaigns, a reevaluation of the state-by-state spending limits seems appropriate.

Perhaps the enforcement area merits inspection, too. In the past few years, judges have gone out of their way to reprimand the Commission for what they perceived as unwarranted litigation. Since disclosure cannot be maintained without enforcement, a thorough review of compliance procedures might produce a more acceptable format.

Currently, the FEC interprets the law to mean that it must obtain a signed admission of guilt during conciliation proceedings—even if the infraction is inadvertent.

Protection of individual rights is a paramount consideration in the framing of laws delegating authority to administrative agencies. The Chamber endorses an effective separation of the quasi-judicial functions of administrative agencies from other functions, such as rule-making and investigation or prosecution.

CONCLUSION

The Chamber has supported and continues to support reasonable provisions for disclosure by committees, organizations and candidates of political campaign contributions and expenditures, such disclosure to be required and enforced by law and governed by an appropriate and competent body.

PREPARED STATEMENT OF VINCENT L. CONNERY, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

As the exclusive representative of 120,000 Federal workers, including all employees of the Federal Election Commission, the National Treasury Employees Union welcomes this opportunity to present our union's views on this important agency to the Committee.

Recently, there have been numerous reports in the media concerning the desire of several members of Congress to abolish the Federal Election Commission and return the oversight and enforcement of Federal election laws to the Congress, the General Accounting Office and the Justice Department. However, we believe that these critics fail to remember that the FEC was created in 1974 in response to the public outcry which resulted from the discovery during the Watergate crisis of election law abuses.

Since the old system did not work, what was needed was an independent agency to perform the dual role of overseeing public disclosure of campaign information and enforcing the laws governing political finance activity. We believe that the FEC and its employees, who are a group of highly skilled and dedicated Federal workers, have successfully accomplished this goal.

From the beginning, the FEC has ably performed its task of demanding timely and accurate disclosure reports from candidates and political committees. This information is available, free of charge, to any individual who comes into the Commission and either requests it personally or makes an inquiry by telephone or by mail. In addition, the Commission has a toll-free telephone number to assist individuals throughout the country with questions relating to the Federal Elections Campaign Act and its application.

Much of the criticism surrounding the FEC concerns enforcement of what many people feel are petty or inconsequential violations of the Federal Elections Campaign Act. We wish to remind this Committee, as the Commissioners of this agency have done in previous testimony before the Congress, that it is the Congress and not the Commission who authored the Campaign Act. FEC employees are simply carrying out the functions which Congress has mandated.

In addition, a strong criticism frequently leveled at the FEC is that the agency has suffered from the lack of strong leadership. But here too Congress must shoulder at least part of the blame. Rather than allow the agency to function as a truly independent body, both the Executive and Legislative branches of our government have encouraged the appointment of the Commissioners who maintain strong partisan ties. This philosophy has made it impossible for the FEC to develop and maintain a consistent policy on the administration of the Campaign Act, to the detriment of the public and agency employees.

Another major problem which has plagued the FEC is Congress's continual manipulation of the Commission's relatively minute budget request. In Fiscal Year 1981, the FEC operated on an appropriation of $9,662,000.00. For Fiscal Year 1982, the Administration recommended an appropriation of $9,740,000.00. This small increase is deceptive, and, in fact, it reflects a real decrease in the Commission's budget.

Several factors have produced this result. First of all, the Commission's rent was increased some $200,000.00 over its FY 1981 level. Secondly, the FEC is forced to increase its staff during election years in order to effectively and efficiently record disclosure information and respond to request for information and requests made by political candidates and the public.

The funding level under which the FEC is now functioning makes its budget problems even more severe. Under the terms of the present continuing appropriation resolution, the agency's FY 1982 budget is only $9,365,000.00 which is the amount reported by the Senate Appropriations Committee on September 22, 1981. Earlier the full House had voted to maintain the agency's budget at the FY 1981 level of $9,662,000.00.

Under the Administration's most recent proposal, however, the budget of the FEC would be reduced to $8,900,000.00. A cut of this magnitude would wreak havoc with the agency's ability to carry out its mission. If the FEC's budget is slashed in such a drastic fashion, fully 25 percent of the Commission's employees will have to be released. Under these circumstances, enforcement of the election laws, service to the public, and the formulation of a coherent, consistent policy would all be virtually impossible.

We believe that there is a genuine need for the FEC. Without this independent agency, our nation's political process would be vulnerable to the kind of abuses which spurred Congress to create the Commission in the first place. If this Committee is truly concerned with making the FEC a viable, effective enforcement tool, then it is incumbent upon you to do all in your power to see that the Commission receives funding commensurate with the responsibility Congress has bestowed upon it.

We appreciate this opportunity to present our views on the FEC, and we will be glad to furnish any additional information the Committee may request.

TITLE INDUSTRY POLITICAL ACTION COMMITTEE,
Washington, D.C., December 9, 1981.

Hon. CHARLES McC. MATHIAS JR.,
Chairman, Senate Committee on Rules and Administration, Russell Senate Office Building, Washington, D.C.

DEAR CHAIRMAN MATHIAS: The Title Industry Political Action Committee (TIPAC)[1] appreciates this opportunity to comment on S. 1851, a bill to amend the Federal Election Campaign Act of 1971. We view the efforts of your committee in reexamining the federal election campaign law as both necessary and beneficial to the entire electoral political process. TIPAC urges the committee to adopt S. 1851 with particular emphasis on the need to enact section 27 of the bill that would eliminate the requirement for trade association political action committees to receive a yearly solicitation authorization from corporate members.

By way of explanation, the TIPAC functions are administered by the American Land Title Association (ALTA) which represents 2,200 members nationwide. Members include land title insurers, title insurance agents, abstractors and associate members. The principal function of the land title industry is to promote the safe and efficient transfer of real estate, including residential and commercial transactions. TIPAC is a multi-candidate political action committee governed by a seven member board of trustees consisting of title insurance industry executives nationwide. TIPAC, through its "connecting organization" ALTA, has always complied with the letter and spirit of the law governing federal election campaign participation and practices. However, the requirements to fully comply with federal election campaign law are complex and, in some areas, unclear. There are certain provisions of the existing Federal Election Campaign Act of 1971 and amendments thereof passed in 1976 which need modification and clarification in order to eliminate unnecessary administrative burdens presently placed on political action committees.

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[1] The Title Industry Political Action Committee, TIPAC, is a multi-candidate, voluntary, nonprofit, unincorporated committee comprised of individuals engaged in the land title insurance industry. TIPAC is not affiliated with any political party and is an independent ahnd autonomous organization.

FEDERAL ELECTION CAMPAIGN AMENDMENTS ACT OF 1982—S. 1851

TIPAC supports the basic concept of S. 1851. We strongly urge the committee to adopt the language of section 27 which would eliminate the requirement that political action committees obtain solicitation approval on an annual basis. Section 27 would amend the annual approval required for solicitation of contributions by corporate members of trade associations to permit the corporate approval to stand until revoked. The Federal Election Commission, in its 1977 legislative recommendations to the Congress, recommended the elimination of the yearly authorization provision. TIPAC, which seeks the authorization of nearly 2,000 corporate members, can testify to the fact that confusion exists among corporate officers as to the necessity and purpose of the yearly approval. In fact, we have found that the annual corporate authorization provision has placed a chilling effect on respondents in that they vaguely remember granting solicitation approval yet are confused by the yearly request. Statistics indicate that, due to the yearly authorization requirement, approximately 40 percent of the ALTA corporate members are precluded from contributing to TIPAC due to the lack of understanding, appreciation, and the legal significance for such authorization.

We urge your committee to re-examine the authorization requirement and we recommend adoption of section 27 of S. 1851 that would permit trade associations to solicit corporations which have given their approval until such approval is specially revoked.

ADOPTION OF SECTION 27—S.1851

The adoption of section 27 of S. 1851 would greatly assist TIPAC and other multicandidate political action committees in planning their fund raising activities and meeting their administrative requirements. There is no sound public policy reason fro requiring TIPAC to re-affirm each year with each ALTA corporate member their support of TIPAC's solicitation efforts. Once granted, such authority should extend beyond the calendar year and remain in effect until revoked. The yearly mailing of authorization forms and pamphlets creates confusion and serves no useful purpose.

OTHER FEC MATTERS OF INTEREST

Mr. Chairman, TIPAC urges your committee to consider and clarify the need to define for purposes of the Federal Election Commission what a solicitation is so as to permit trade associations to disseminate information at their annual conventions and meetings. TIPAC, in conforming with the present law and interpretations rendered by the Federal Election Commission, has been reluctant to actively discuss TIPAC matters at ALTA annual conventions and meetings. We urge your committee to refine and clarify the present requirements determining what constitutes a solicitation.

CONCLUSION

TIPAC strongly supports the basic tennants of S. 1851 and recommends its adoption with particular emphasis on section 27 which would eliminate the need for trade association political action committees to secure the yearly authorization of its corporate members prior to solicitation of such members.

We appreciate the opportunity to express our opinions on the proposed federal election amendments and we request that this statement be made part of the hearing record.

Sincerely,

GERALD L. IPPEL,
Chairman, TIPAC.

PREPARED STATEMENT OF REED LARSON, PRESIDENT, NATIONAL RIGHT TO WORK COMMITTEE

On behalf of the more than 1.5 million members of the National Right to Work Committee, I want to express my thanks to the Senate Rules Committee for taking affirmative action in reviewing what I consider to be one of the most flawed agencies of government today, the Federal Election Commission. I wish to address two central problems with the FECA and the Federal Election Commission that I believe must be dealt with if any true reform of the election laws is to be achieved; namely, the use of forced-union dues and fees in the political process and the arbitrary, capricious and selective enforcement of the FECA by the Federal Election Commission itself.

The problem of compulsory-dues political spending stems from two laws. The National Labor Relations Act grants union officials the power to force workers to pay money to a union as a condition of employment. Then, the Federal Election Campaign Act allows union officials to spend those compulsory-dues dollars in support of union officials' own political candidates and causes.

United States Supreme Court Justice Hugo Black recognized this injustice two decades ago. Justice Black said:

"There can be no doubt that the federally sanctioned union shop contract here, as it actually works, takes a part of the earnings of some men and turns it over to others, who spend a substantial part of the funds so received in efforts to thwart the political the political, economic and ideological hopes of those whose money has been forced from them under authority of law."

The injustice of forced-dues political spending is a topic that must be considered in any discussion of Federal Election Campaign Act reform. While the FECA, as amended in 1976, prohibits the use of compulsory dues for direct cash contributions to political candidates, it actually advocates and authorizes the use of "in-kind" contributions from general union treasury funds financed largely by compulsory-dues dollars.

The hierarchy of organized labor has made no secret of the manner in which they spend the tens of millions of dollars of the compulsory-dues money in so-called "in-kind" contributions. In a July, 1979, edition of Steelabor, the official publication of the United Steelworkers-union, the union hierarchy made clear how union treasury funds are diverted to partisan political activity.

Compulsory dues "can't go for direct political contributions—but it can do a lot: mailings supporting or opposing candidates, phone banks, precinct visits, voter registration and get-out-the-vote drives, contributions to national, state or local central COPEs and it can be used to raise voluntary funds for the USWAPAC."

And no one less than Lane Kirkland, currently president of the AFL–CIO, himself brushed aside the camouflage and exploded the myth that union political activities are merely "aimed at union members and their families." On September 28, 1971, addressing the Amalgamated Transit Union convention in Las Vegas, Nevada, Kirkland said:

"Over the next thirteen months labor and its political arm—COPE—has a great deal of work to do. We have to carry our message to every American eligible to vote and we have to make sure that they understand what America's choices really are. And we have to make sure that every voter we can reach is registered, and that they go to the polls."

In order to "wink at the law," union officials have segmented their political expenditures into two categories: (1) "hard money" given directly to the union officials' favorite candidates, taken from political funds collected directly from union members; (2) "soft money" consisting of compulsory-dues dollars used for indirect support of political candidates and for the operation of union PACs.

The magnitude and extent of the "soft money" is difficult to determine. It is obvious, however, that the "hard money" is merely the tip of the iceberg.

Respected labor columnist Victor Riesel turned the spotlight on union officials' "soft political contributions" shortly after the 1976 elections. "During the political hunting season inside labor," wrote Riesel, " 'soft money' is hard electioneering currency. Actually it's dues money. By the millions."

While no official statistics for total union "in-kind" spending are available, Mr. Riesel estimated the 1976 total at $100 million—a figure that many experts consider conservative. Again, the union hierarchy's lack of respect for the wishes of rank-and-file union members was readily apparent during the 1980 election season. Despite the fact that nearly half of all union members eventually voted for Ronald Reagan, the union hierarchy endorsed Jimmy Carter and supported him with tens of millions of dollars in unreported, "in-kind" contributions financed by the dues of captive union members.

In the AFL–CIO's executive council report to the national convention, union officials pointedly state that 140,000 "activists" were put into the "registration, education, and get-out-the-vote programs." More than 10 million calls were made by these so-called "activists," "who staffed the phone banks in hundreds of union offices throughout the country."

Two points need to be made about the above statement. First, a large majority of these so-called "activists" are nothing more than paid union staffers. By their own admission, the union hierarchy is using their offices and paid staff workers for activities completely unrelated to the collective bargaining process for which those funds are ostensibly collected.

And secondly, since Mr. Kirkland himself has admitted that the activities of COPE and the AFL-CIO go beyond their own "membership," it is quite obvious that much of the work was directed at targeted areas and to the general public in support of a candidate who barely received 50% of the vote of union members.

The amount of documented evidence that compulsory union dues are being used by union officials for activities completely unrelated to "legitimate" collective-bargaining purposes is mounting every day.

A Special Master, appointed by the U.S. Federal District Court in Baltimore, Maryland, found that, in 1979 alone, the Communications Workers of America (an AFL-CIO affiliate) spent only 19% of the union's total dues income for collective bargaining. The other 81%—24 million dollars—was used illegally for political and other unconstitutional, nonbargaining purposes.

As long as Congress permits the use of tens of millions of dollars extorted from the paychecks of unwilling workers to be used by the hierarchy of organized labor for the advancement of their political and ideological causes, the FECA is fatally flawed.

The denial of First Amendment freedom of association is pointed out most clearly in this case by the quotation by Thomas Jefferson that "to compel a man to make contributions for the propagation of ideas to which he is opposed is sinful and tyrannical."

Legislation introduced in the Senate as S. 1550 by North Carolina Senator Jesse Helms and in the House as HR 4351 by Alabama Congressman William Dickinson must be acted on immediately to rectify the situation. These bills would prohibit the use of compulsory dues for political purposes. Any true reform advanced by this Committee must include the provisions of these two bills.

While the compulsory-dues-spending loophole in the Federal Election Campaing Act, itself, indicates a serious disregard for First Amendment freedoms of compulsory union members, the way the Act is administered by the Federal Election Commission exacerbates the problem. Because of the vagueness and breadth of the Federal Election Campaign Act, the sweeping and dangerous powers yielded by the Commission in the vital election process is certain to be wielded on behalf of the political bias and prejudices of those upon whom this enormous power is centered.

The National Right to Work Committee has firsthand experience of the Commission's arbitrary enforcement of the Act. Since its inception in 1974, the Commission has worked to foster in many areas Big Labor's political objectives as union officials sought to make the Commission an auxiliary arm of the AFL-CIO.

Largely, through the complicity of former AFL-CIO staff workers, the National Right to Work Committee's own voluntary political action arm—the Employee Rights Campaign Committee (ERCC)—has been unfairly barred from participating in two federal elections—1978 and 1980.

The National Right to Work Committee ran afoul of the FEC's compulsory-unionism bias when it formed ERCC in January, 1976, and filed with the federal agency for an advisory opinion to insure compliance with the vague and complex election laws.

Instead of providing an answer within the mandated "reasonable time," the FEC stonewalled for over a year.

In September of 1976, FEC staffers prepared a draft advisory opinion approving the operating procedure of ERCC. However, the draft was abruptly removed from the FEC weekly meeting agenda by then-Chairman of the Commission Thomas E. Harris, former 20-year AFL-CIO General Counsel.

Less than a month after Harris made the arbitrary decision to remove the advisory opinion, the National Committee for an Effective Congress (NCEC), a political action group closely linked with proponents of forced unionism, filed a complaint with the FEC, alleging that the Right to Work Committee had no members for purposes of solicitation.

The FEC demanded that the Committee pay over $300,000 in penalties, sign a confession of guilt, and amend its operating procedures. But Big Labor's stalwarts on the FEC still refused to define "membership" for the Committee, and continued to stonewall on requests for specific instructions on how to comply with the law.

The FEC's trumped-up charges against the Employee Rights Campaign Committee were unanimously struck down two months ago by a three-judge panel in the U.S. Court of Appeals for the District of Columbia Circuit. Within the last two weeks, a request by the FEC for a rehearing en banc on this case was denied by the full Court.

The National Right to Work Committee is not the only organization which has had to suffer under the ideological and political biases of the FEC staff. Their assaults on other groups even brought one judge in New York to label their disregard for the First Amendment as "perverse."

And while the National Right to Work Committee has been tied up in litigation for nearly six years, the Commission has actually ignored and refused to execute its function when questions have arisen concerning the actitivies of organized labor. There are numerous examples.

In November of 1978, the National Right to Work Committee—outraged by the use of compulsory dues for political purposes—filed a series of complaints with the FEC charging scores of congressional candidates with election law violations. The complaints continued evidence showing that each of the candidates had accepted campaign contributions well in excess of the legal limit of $5,000 per election from the AFL-CIO and its member unions.

Rather than investigate these well-documented charges, however, the FEC summarily dismissed them. It claimed that organized labor enjoys a "special status" that makes it "automatically exempt" from the spending limitations that govern the rest of society.

Determined to see justice done, the Right to Work Committee promptly supported a suit against the FEC, charging gross dereliction of duty.

The right to Work Committee, the judge ruled, had a valid point. If the political action committees of the AFL-CIO and its member unions are under single control (as they most assuredly are), they must be considered a single unit. And if they are a single unit, he said, they must be restricted to a single $5,000 contribution per election year per candidate, rather than the hundreds of thousands of dollars they now lavish on "promising" office seekers—office seekers willing and eager to help union officials in their legislative attempts to impose compulsory unionism on every American worker.

As to the FEC's arguments about organized labor being entitled to some "special status," the judge ruled them wholly "without merit."

In short, he concluded, the FEC acted "contrary to law" when it initially refused even to investigate the Committee-supported complaints.

That's not all.

From 1974 to 1976, the National Education Association-union (NEA) automatically and illegally deducted an estimated $1 million from teachers' paychecks as political "contributions"—without the teachers' permission.

This rip-off—known as the "reverse checkoff"—was a notorious election law violation. Yet the FEC—fully knowing this—refused to act against the union until the Right to Work Committee obtained a court order forcing it to do its job.

From March 1975 to June 1976, the AFL-CIO illegally funneled some $312,000 in compulsory dues from its general treasury to its political action committee, COPE.

Once again, the violation was demonstrably clear. Yet once again, the FEC ignored Big Labor's infraction—until the Right to Work Committee got a court order compelling the agency to act.

The pattern that emerges from all this is appallingly clear: union officialdom breaks the law, and the FEC, by whitewashing the violation, becomes an accomplice after the fact.

It is my sincere hope that any legislation coming forth from this Committee following hearings and investigation into the operations of the FECA and the Federal Election Commission will severely restrict and limit the arbitrary powers conferred upon the staff of the Federal Election Commission. It is absolutely essential that the electoral process be administered in a fair and evenhanded manner. As currently constructed, the FEC has become a political gestapo intimidating and harassing its political and ideological opponents and promoting and defending those with which it agrees.

Likewise, any amendment or reform of the FECA itself must protect and defend the First Amendment freedoms of millions of American workers who are compelled to join a labor union as a conditon of employment. The use of compulsory fees for political purpoees must be ended it the First Amendment to the Constitution is to have any meaning whatsoever.

Finally, I urge the Committee to hold hearings at the earliest possible date on S. 1550, so that the massive amount of evidence which exists concerning the use of compulsory dues and fees for political purposes can be brought to the attention of the public.

United States League of Savings Associations,
Washington, D.C., December 14, 1981.

Hon. Charles McC. Mathias, Jr.,
Chairman, Senate Committee on Rules and Administration, Russell Senate Office Building, Washington, D.C.

Dear Senator Mathias: The United States League of Savings Associations[1] appreciates this opportunity of commenting on your bill, S. 1851, the Federal Election Campaign Amendments of 1982. along with other legislation which has been the subject of recent hearings in your Committee. The constructive efforts of the U.S. Congress to examine the federal election campaign laws and evaluate the activities of the Federal Election Commission benefits the entire federal political process. We support your Committee's review of these laws and offer suggestions which we believe will further refine the election campaign process.

By the way of background, the U.S. League administers, maintains and is the "connected organization" for its separate segregated fund, the U.S. League-Savings Association Political Elections Committee (U.S. League-SAPEC), a multi-candidate political action committee directed by a Finance Committee composed of savings and loan executives from throughout the United States. SAPEC and the U.S. League have always fully complied with the letter and spirit of the law governing federal election campaign practices. We believe that the law should be modified to eliminate unproductive administrative burdens which thwart communication with our members. At the same time we encourage the fine tuning of the law which will establish reasonable requirements for disclosure and reporting of the core of political action committee activities, the receipt and expenditure of campaign funds.

The 1976 Amendments to the Federal Election Campaign Act created a requirement designed to stifle the communication by trade association political action committees with their members and the solicitation of their members' employees within the political action committee's eligible class for such a solicitation. Existing law requires that trade association political action committees must obtain written approval from the corporate members of the association before any solicitation can be made of the executive and administrative employees of the corporate members. The corporation cannot give permission to more than one trade association political action committee per calendar year and the permission expires at the end of each calendar year.

This requirement has created confusion and misunderstanding throughout our business. The managing officers of our members who are already overburdened with detailed federal regulations affecting all aspects of the operation of their business are hesitant to sign another government mandated form. The authorization form serves no useful purpose since the corporate member always has the opportunity to discourage the solicitation of its employees regardless of a federal approval requirement. Anyone familiar with trade association membership relationships will realize that a trade association will not retain its corporate members if the association refuses to comply with a request not to solicit.

The requirement that a corporation can grant authorization to only one trade association political action committee per calendar year compounds the communication problem. The corporation which is a member of several trade associations should have the option of encouraging its eligible employees to participate in the activities of all the association political action committees of which it is a member. There is no justification for arbitrarily restricting the coroporation's authorization to only one political action committee.

We urge the Committee to eliminate the authorization requirement from the statue. In the alternative we strongly support Section 27 of S. 1851 which would provide that an authorization would continue year after year until revoked by the corporation. This would be a major step forward in modifying the authorization requirement. The yearly papering of savings and loan associations with our authorization form serves no public purpose.

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[1] The U.S. League of Savings Associations has a membership of 4,400 savings and loan associations representing over 99% of the assets of the $625 billion savings and loan business. League membership includes all types of associations—Federal and state chartered, stock and mutual. The principal officers are: Roy Green, Chairman, Jacksonville, FL; Leonard Shane, Vice Chairman, Huntington Beach, CA; Stuart Davis, Legislative Chairman, Beverly Hills, CA; William B. O'Connell, President, Chicago, IL; Arthur Edgeworth, Director, Washington Operations; Glen Troop, Legislative Director; and Phil Gasteyer, Associated Director, Washington Operations. League headquarters are at 111 East Wacker Drive, Chicago, IL 60601. The Washington Office is located at 1709 New York Avenue N.W., Washington, D.C. 20006. Telephone: (202) 637-8900.

We believe that the application of Section 8 of S. 1851 requiring the reporting of costs of operation of certain political action committees would add to the administrative and paperwork burden of the reporting committee and the Federal Election Commission while not responding to the spirit of the statute. Federal law establishes specific guidelines which achieve public policy objectives of regulating the election process and disclosing the receipts and expenditures relating to the support of candidates for federal office. The disclosure of the direct and indirect expenditures of the organization in support of its political action committee would not serve any public policy objective. Instead, it would further complicate the reporting process and require Federal Election Commission time and money which could be better spent on other objectives.

Although not contained within any legislation currently before the Committee, we suggest further clarification of Section 321 of the Federal Election Campaign Act of 1971, as amended, (2 U.S.C. 441b) to ensure that a trade association political action committee can solicit the officers, directors and policymaking committee members of the trade association in those capacities without the necessity of obtaining permission from the member corporations by whom these individuals are employed. Individuals active in governing the trade associtiion and setting policy either directly of indirectly affecting the operation of the association's political action committee should not have to be informed of the committee's activities only after this authorization process has been completed. Since there is no definition of a "solicitation" in the statute and the regulations and advisory opinions of the Federal Election Commission are unclear, current interpretations differ on the extent to which the leadership of the association can participate in the committee's fund-raising activities and operation.

On a related subject, we would recommend that the Committee clarify that the directors of mutual, non-stock corporations such as mutual savings banks, mutual savings and loan associations and credit unions, are within the permissible class for trade association solicitation.

The U.S. League will continue to work with the Committee in seeking clarifications and improvements in the existing Federal Election Campaign law while retaining the basic values inherent in the law. We hope that this letter can be made a part of the hearing record and if you, other Committee members or your staff have any questions, please contact the undersigned at any time.

Sincerely,

ARTHUR B. EDGEWORTH,
Director, Washington Operations.

JOHN C. RASMUS,
Staff Vice President.

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